UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA	:	**Case No.: 3:06-cr-00196-SSB**
	:	
v.	:	**Judge Sandra S. Beckwith**
	:	
MICHAEL E. PEPPEL,	:	
	:	**MEMORANDUM REGARDING U.S.**
Defendant.	:	**SENTENCING GUIDELINES**
	:	**CALCULATIONS**
	:	

INTRODUCTION

The government is seeking in this case multiple level enhancements for Mr. Peppel's sentence based upon three Sentencing Guideline factors: loss, §2B1.1(b), number of victims, §2B1.1(b)(2), and use of sophisticated means, §2B1.1(b)(8). On each, the government bears the burden of proving the factual basis. The government presented its evidence at the evidentiary hearing before this Court on June 21 and 23, 2011.[1] Based upon that evidence, there is no basis in law for an enhancement in Mr. Peppel's sentence due to any of the factors.

The established facts of this case are straightforward. Mr. Peppel participated in the Mercatum transaction, which fraudulently inflated MCSi's net sales for the year ended December 31, 2011. As the record makes clear, Mercatum was not a fictitious transaction nor one that was concealed or created furtively by Mr. Peppel. It involved the actual shipment of actual products to a genuine distributor who actually tried to sell them to customers. The transaction took place with the full knowledge, guidance, and approval of the Company's board of directors, including its independent directors, and its sophisticated, "big four" outside auditor.

[1] The government offered three witnesses: Special Agent Maria Gross of the IRS Criminal Investigation Division, Dr. Marlena Akhbari, chair of the Department of Finance at Wright State University, and Joseph Geraghty, a financial consultant who specializes in servicing distressed companies. References to the testimony at the hearing will be [witness name], [volume number]-[page number].

The fraud in the Mercatum transaction was because it was not correctly booked. Specifically, it was accounted for as an appropriate "bill and hold" transaction, permitting immediate revenue recognition, when it should have been booked as a "consignment," which would have permitted the Company to recognize revenue only when Mercatum sold the products to customers.

The only effect of the Mercatum transaction that the government has established is that it overstated MCSi's net sales for the year ended December 31, 2001 by approximately 4.6%, less than the informal 5% "rule of thumb" that auditors use when assessing whether or not an error in financial statements is material for accounting purposes.[2] The government has not established the transaction's effect on MCSi's net income for the period, and the government's own evidence suggests that any net income overstatement may be as low as $1.9 million. These serious but quantitatively modest overstatements affected the Company's financial statements for a year in which the Company's results, with or without Mercatum, badly failed to meet its own guidance or Wall Street analysts' expectations. Even with false revenue from Mercatum included, the Company reported a loss of $0.70 per share, vastly less than the consensus estimate of $1.24 in income, and investors punished the Company mercilessly, causing the Company's share price to fall a catastrophic 40% following the release of earnings. At most, Mercatum only slightly and unquantifiably mitigated the effects of the Company's obviously disastrous year.

Notwithstanding these incontrovertible facts, the government, through its blunderbuss approach to loss calculations and advocacy of other clearly inapplicable Guidelines enhancements, is seeking to punish Mr. Peppel for far more than the Mercatum transaction and for more, indeed, than even all the conduct alleged in the Superseding Indictment. As the self-

[2] *ECA Local 134 IBEW Joint Pension Trust v. JPMorgan Chase Co.*, 553 F.3d 187, 204 (2nd Cir. 2009) ("the five percent numerical threshold is a good starting place for assessing the materiality of the alleged misstatement"); SEC Staff Accounting Bulletin 99 (1999) ("One rule of thumb in particular suggests that the misstatement or omission of an item that falls under a 5% threshold is not material in the absence of particularly egregious circumstances, such as self-dealing or misappropriation by senior management").

serving testimony of failed "turnaround specialist" Joseph Geraghty makes clear, the government seeks to impose blame, and punishment, on Mr. Peppel for the entire MCSi bankruptcy. This is factually inaccurate, unsupportable as a matter of law, and fundamentally wrong.

FACTS

1. The Mercatum transaction.

On the Mercatum transaction, MCSi booked a $37 million sale that had been approved by the Board of MCSi and whose accounting treatment was approved by MCSi's independent auditors, PricewaterhouseCoopers. Akhbari, 1-76-77; Geraghty, 2-38, 60-61; Exhs. 9-10. The Mercatum transaction had the effect of increasing net sales for MCSi's 2001 year by $37 million.

On the record before the Court, there is no way of knowing the amount of impact from the Mercatum transaction on the net income or loss of the Company.[3] The government presented no testimony on the subject. The MCSi board minutes from March 11, 2002 recite a "margin at 35-40%" on the transaction. Exh. 9. That would translate into a cost of goods of between $22.2 and $24.1 million and net income of $13 million to $15 million. There is a government expert's report that identified a range of possible margins associated with the transaction anywhere from 5% to 100% – with the 100% margin attributed to one witness who had previously testified that the margins were 90%. Exh. 46, p. 20. Thus, by the government's own account, the overstatement of net income may be anywhere between $1.9 million and $37 million. And since PwC knew of the transaction, approved it as appropriate for bill-and-hold treatment, and certified its audit of MCSi's financials, it is hard to believe that the cost of goods was really zero. The government has done nothing to prove the amount of any overstatement of net income.

[3] Mr. Peppel, a former employee who left the company well before these criminal proceedings started, has had no access to either the financial records of the company or the records of its auditors PWC to make his own evaluation of this point. Quite plainly the government has had either access to or the ability to obtain access to all of those records.

2. The Mercatum transaction increased net sales in the 2001 financial results MCSi released on February 26, 2002; even with the transaction those results were so bad that the stock immediately fell 40%.

Public release of the Mercatum information came with announcement of 2001 year-end results. Exh. D (February 26, 2002 press release). The same information was included in the 10-K filed April 1, 2002. Exh. P. With the $37 million Mercatum transaction included, reported 2001 net sales of $810 million were overstated by 4.6%. Exhs. D, P. Because no one knows the cost of goods recorded for the transaction, there is no way of knowing how net income would have been affected by it. With some net income from the Mercatum transaction apparently included in the results, the Company's net for the year still represented a 70¢ per share loss. *Id.*

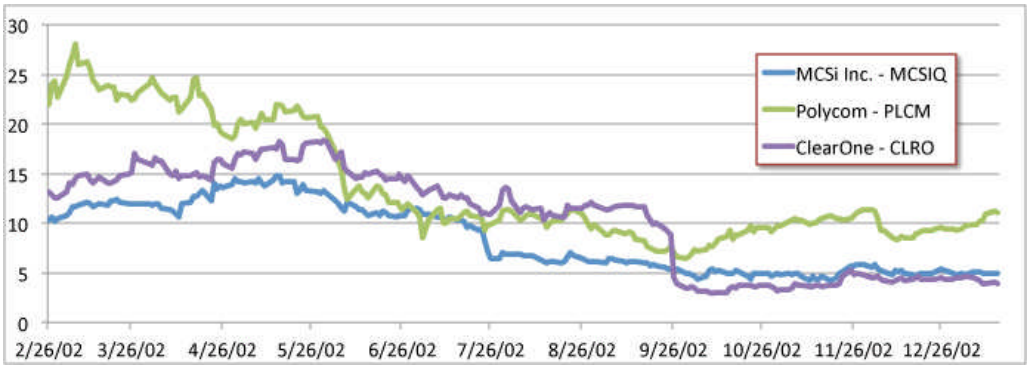
The 70¢ per share loss came as a surprise to the market. Market analysts' consensus on the stock at the time of the press release had been $1.25 in net income per share, revised down from a significantly higher earlier estimate as these analysts lost confidence in the Company. Thus net income for the year came in nearly $2 a share lower than what was expected, a disaster. The stock price fell precipitously, losing 40% of its market value in one day. Exh. D; Akhbari, 7.

Under the only credible government theories, the loss resulting from the securities fraud offence here is equal to the loss incurred by persons who purchased MCSi stock *after* the February 26, 2002 announcement of earnings presumably at a price higher than the stock would have been if the Mercatum transaction had not been included in the Company's sales and earnings. The impact of Mercatum on net sales for the Company is known; the impact on net income of the Company is unknown; the impact on the stock price is unknown. The government's expert on securities damages testified that she had not and could not calculate how the false information regarding the Mercatum transaction affected the stock price. (Akhbari, 1-

78-79 ("Q. And in terms of what the market value impact of removing that $37 million as of that date, that would only be speculation? A. Correct").

3. Following the February 26, 2002 release of MCSi's 2001 financial results, the stock price continued to move lower over the next year – as did the stock of its key publicly-traded comparable companies.

Between February 26, 2002 and the following January, the stock price continued to drift lower on poor earnings results and questions about the long term prospects of the video conferencing business that was central to MCSi's business model.



4. None of the 2003 news that drove the stock price down further had anything to do with the Mercatum transaction.

In January, 2003, the SEC filed a complaint against ClearOne, one of the few publicly traded peers of MCSi, suggesting that its earnings had been overstated. While the SEC complaint against ClearOne did mention MCSi, it listed MCSi as a purchaser of ClearOne products and accused *ClearOne* of having misstated the timing and nature of its sales. Nothing challenged MCSi's accounting treatment of its purchases from ClearOne. Exh. L, ¶¶40, 47. Nothing in the SEC complaint otherwise suggested any accounting manipulations or false statements by MCSi. *Id.* Nothing in the SEC complaint related to Mercatum. *Id.*

On January 17, 2003 the first of several shareholder class actions was filed against MCSi – and the stock took another hit. Exh. H. These 10b-5 class actions cited purported false statements leading up to the February 26, 2002 announcement of earnings. Harrison Complaint,

Exh. G, ¶ 16 (class period from July of 2001 through February 26, 2002). The theory was that purchasers of MCSi stock had been misled by too rosy a view of the future coming from the Company in the months leading up to the February 26, 2002 earnings announcement, and that they had lost money when the stock fell by 40% upon the making of that announcement. Exh. G.

Finally, on February 14, 2003 MCSi announced that it had received a subpoena as part of an SEC investigation. Exh. E. There was no reference to any accounting irregularities, no reference to the February 26, 2002 earnings announcement, and no reference to the Mercatum transaction. The stock price fell further upon that announcement.

LEGAL ANALYSIS

I. Burden of Proof.

1. The government bears the burden of proof on the sentencing enhancements it seeks.

The government has the burden of proof on facts supporting an upward adjustment under the guidelines. *United States v. Adu*, 82 F.3d 119, 123-124 (6th Cir. 1996) ("party seeking a departure, either upward or downward from a presumptive guideline sentence, has the burden of proving entitlement to the departure"); *United States v. Jones*, 641 F.3d 706,712 (6th Cir. 2011) ("The United States' burden is to prove the amount of loss under the sentencing guidelines by a preponderance of the evidence"); *United States v. Zolp*, 479 F.3d 715, 718 (9th Cir. 2007) ("The government bears the burden of proof on the facts underlying a sentence enhancement").

2. The requirement of a reasonable estimate does not authorize the Court to indulge in speculation or to use factually or logically flawed premises.

The government argues that precision is not required in loss determination. All that is required is a "reasonable estimate of the loss." U.S.S.G. §B1.1, comment 2(C). But leeway in

the precision of a calculated number is very different from asking a court to entertain speculation or abandon wholesale the required proximate cause link between the offense and the offense.

Mr. Geraghty is the sole basis for the government's new-found theory of lender loss. When asked about the lenders' reaction in December 2001 to learning of the dismal prospects for MCSi's finances for its 2001 year, he testified that he could only "speculate" on that reaction because he did not know the lenders' thinking. Geraghty, 2-25-26 ("I'm going to speculate because I don't have [intimate] knowledge with regard to their calculus"). And yet his theory of loss depends entirely on his speculation about how those same lenders might have responded two months later if they had received essentially the same information, *i.e.*, notice that the 2001 financial results were terrible through the breach of a financial covenant in the Company's credit agreement. Similarly, Dr. Akhbari testified that she could not directly assess the impact of the $37 million Mercatum sales overstatement on MCSi stock because that would be "speculation." Akhbari, 1-78-79. If the head of the Department of Finance at Wright State University, who teaches stock valuation, cannot identify a per share loss associated with the offense without speculating, how does the government expect anyone else to be able to do the same thing?

"While estimates are permissible, courts must not speculate concerning the existence of a fact which would permit a more severe sentence under the guidelines." *United States v. Sepulveda*, 115 F.3d 882, 890 (11th Cir. 1997); *United States v. Liss*, 265 F.3d 1220, 1230 (11th Cir. 2001) (where the amount of loss is at issue, government must "support [ ] its loss calculation with reliable and specific evidence"); *United States v. Wilson*, 993 F.2d 214, 218 (11th Cir. 1993) ("the district court must not speculate concerning the existence of a fact which would permit a more severe sentence under the guidelines"); *cf., Onyekelu v. Mercy Health Care*

Partners, 2008 WL 4560770 (S.D. Ohio 2008) at *5 ("this unsupported speculation is insufficient to satisfy plaintiffs' burden of coming forward with pretext evidence").

Nor is the problem with the government's proof that of the "inherent imperfections" of estimates. Courts characterize those as primarily quantitative in nature, whereas the factual errors and failures to address important matters that are found here are "logical defects." *United States v. Laurienti*, 611 F.3d 530, 559 (9th Cir. 2010) (while inherent imperfections are permissible as long as they are "logical and are not prone to overwhelming the final result," logical defects render a loss calculation fatally unreasonable, even when the precise quantitative effects of the defects cannot be calculated). Although the Sixth Circuit has not defined reasonable estimate is for securities fraud purposes, its recent decision in *United States v. Jones*, 641 F.3d 706 (6th Cir. 2011), applies a standard that is very similar to the Ninth Circuit's approach in *Laurienti*. In Jones, the court rejected, as "procedurally unreasonable," a loss estimate based on a logically and factually flawed statistical analysis in a healthcare fraud case.

The government's various loss numbers here fail under the standards of both *Laurienti* and *Jones*. They include analytical flaws, factual errors, and unsupportable assumptions that render them procedurally or logically unreasonable. For example, every government calculation includes a substantial number of MCSi's shares that were not traded during the fraud period and that cannot possibly have engendered or suffered a loss cognizable under Section 2.B.1.1. Similarly, none of the government's numbers make any meaningful attempt to distinguish the effects, if any, of Mr. Peppel's fraud on MCSi's share price from even the most obvious and important other factors affecting it, including the Company's very substantial decline in performance and share price over the previous year, the tremendous decline in the Company's industry during the period, analyst and investor discomfort with the Company's strategy of

growth by acquisition, the failure of the expected surge of video conferencing technology following the September 11th terrorist attacks, and the effects of Ira Stanley's serious and distinguishable fraud. Mr. Geraghty's "bank loss" theory is similarly flawed because, among other things, it relies on a credit agreement covenant recalculation that disregards the provisions of the credit agreement that define how the covenant must be calculated, ignores publicly available financial information that should have been included in the calculation, and utterly misunderstands the relative rights and roles of the Company and lenders in interpreting and enforcing the covenant.

II. Loss.

Standard for determining loss.

> Subject to the exclusions in subdivision (D), loss is the greater of actual loss or intended loss.
>
> (i) Actual Loss – "Actual loss" means the ***reasonably foreseeable*** pecuniary harm that ***resulted from the offense***.
>
> (ii) Intended Loss – "Intended loss" (I) means the pecuniary harm that was intended to result from the offense; and (II) includes intended pecuniary harm that would have been impossible or unlikely to occur (e.g., as in a government sting operation, or an insurance fraud in which the claim exceeded the insured value).
>
> (iii) Pecuniary Harm – "Pecuniary harm" means harm that is monetary or that otherwise is readily measurable in money. Accordingly, pecuniary harm does not include emotional distress, harm to reputation, or other non-economic harm.
>
> (iv) Reasonably Foreseeable Pecuniary Harm – For purposes of this guideline, "reasonably foreseeable pecuniary harm" means pecuniary harm that the defendant knew or, under the circumstances, reasonably should have known, was a potential result of the offense.

U.S.S.G. § 2B1.1, Application Notes, ¶3 (November, 2002).[4]

At various times, the government has offered a number of different analyses, disclosed and undisclosed, with loss values ranging from $400,000 to $298 million. Each of the analyses the government has shared with Mr. Peppel involves a product of two numbers – a per share loss that resulted from the offense and the number of shares affected by that loss. The government has the burden of proof on both pieces of that equation. The heart of the argument was presented

[4] Paragraphs 22 and 24 of the Amended Initial PSIR recites that the parties agreed to use the "2002 edition of the Sentencing Guidelines Manual" in this matter and that Mr. Peppel's plea agreement will be null and void if the court does not use the "2002 edition of the Guidelines Manual." Paragraph 5 of the Plea Agreement was more specific: the parties carefully identified "the Sentencing Guidelines Manual dated November 1, 2002 … exclusively" (emphasis added). By design, the Agreement does not contemplate application of later amendments and, recognizing that application of that specific set of guidelines was an essential condition of the plea, provides that the Plea Agreement "shall be deemed null and void" if any other guidelines are used.

The Department of Probation had added a four-point "public company officer" enhancement that was first introduced in the Emergency Amendments to the Guidelines that went into effect January 25, 2003, well after November 1, 2002. This enhancement was clearly not intended by the United States or the Defendant to be included in Mr. Peppel's guidelines calculation, and consequently Mr. Peppel objected to addition of this enhancement. The Emergency Amendments were adopted not only after November 1, 2002, but well after Mr. Peppel's relevant conduct. Because they add a substantively new and substantial enhancement Mr. Peppel could not have contemplated at the time of his conduct, their application in this case would be contrary to basic notions of fairness and raise ex post facto issues. All three of the charges to which Mr. Peppel pled guilty derive from the Mercatum transaction, which occurred in the first quarter of 2001. The affected 2001 financial results appeared in the Company's earnings release on February 26, 2002 and then in the Company's 10-K filed April 1, 2002. The 10-Q filed August 14, 2002 referred to in Charges 1 and 17 did not contain different or additional misstatements arising from the Mercatum transaction. Rather, it included a false statement and was falsely certified by Mr. Peppel because it contained the 2001 results affected by the Mercatum transaction. Neither the Plea Agreement nor even the Superseding Indictment contains any allegation or statement to the contrary. Nor do they include any act by Mr. Peppel after the filing of the August 14 10-K. Indeed, the Superseding Indictment does not allege any overt act by Mr. Peppel occurring in 2003, either related to Mercatum or otherwise. The last reasonable date that could be used as the end of Mr. Peppel's relevant conduct is August 14, 2002. However, because the information included in that 10-Q was merely repetition of previously filed information, the more appropriate reference date is April 1, 2002. In either case, the end of Mr. Peppel's offense conduct came at least six months before the Emergency Amendments became effective.

All of this issue may be moot, since the government certainly has not raised the "public company officer" enhancement in the evidentiary hearing. If the issue is not moot, plainly it would be unjust to apply the post-November 2002 amendments to Mr. Peppel.

by Dr. Marlena Akhbari, who testified to a loss of $62,023,918, the product of total affected shares of 21,330,212 and a per share loss of $2.91.[5] Exh. 41.

1. The government's affected shares numbers are grossly overstated.

Each of the calculations the government has at various times embraced has involved more than 20 million affected shares. All have started with some 25 million shares outstanding for the Company and subtracted from that the shares held by Mr. Peppel and Mr. Stanley. That was where, for example, SEC accountant Hlavacek stopped his analysis and had total affected shares of more than 24 million. Dr. Akhbari recognized that the treasury shares held by MCSi could not be affected shares so she subtracted out the 2.8 million treasury shares to get to her 21 million figure. Akhbari, 1-56-57; Exh. 41.

All of those calculations, however, assume that the owners of every share of stock experienced a loss as a result of the false public statements related to the Mercatum transaction. That simply is not true as a matter of law. Someone who purchases stock before a false statement is made in a securities filing has no injury and no claim. *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 731 (1975) ("The plaintiff class in a Rule 10b-5 action was limited to actual purchasers and sellers"); *O & G Carriers, Inc. v. Smith*, 799 F.Supp. 1528, 1539 (S.D.N.Y. 1992) ("Since the alleged fraud therefore took place *after* O & G Carriers, Bren and Rothfarb had invested, the alleged fraud was not 'in connection with' the purchase or sale of a security" emphasis in original); *Perz-Rubio v. Wyckoff*, 718 F.Supp. 217, 236 (S.D.N.Y. 1989) ("The alleged fraud must be prior to or contemporaneous with the securities transaction in question"); *Gulf Corp. v. Mesa Petroleum Co.*, 582 F.Supp. 1110, 1121 (D. Del. 1984) (misrepresentations postdating a plaintiff's purchases of stock are not made "in connection with

[5] Dr. Akhbari looked at the decline in the market price of MCSi common stock on January 15, 2003 and determined that 68.42% of that value ($2.91) was lost due to disclosures of information between then and February 14, 2003. Exh. 41.

the purchaser's sale of any security" for purposes of Section 10(b) and Rule 10b-5); *Troyer v. Karcagi,* 476 F.Supp. 1142, 1148 (S.D.N.Y. 1979) ("There can be no such causal connection where the misstatement or omission occurred after the purchase"); *Clinton Hudson & Sons v. Lehigh Valley Cooperative Farms*, 73 F.R.D. 420, 424-26 (E.D. Pa. 1977), *aff'd,* 586 F.2d 834 (3d Cir. 1978) ("here, where the activity alleged to be fraudulent occurs five years after the purchase, plaintiff's claims against the defendants amount to nothing more than the hindsight observations that because of their 1969 activities, the defendants must have contemplated doing wrong prior to that time and must have been doing so in 1964").

Here, someone who purchased MCSi stock prior to February 26, 2002 did not pay a price affected in any way by the Mercatum transaction. Akhbari, 1-69, 1-74-76, 1-93. While acknowledging that point, Dr. Akhbari testified that she thought that some who purchased MCSi stock prior to February 26, 2002, might have sold it earlier than they did but for the overstatement of 2001 net sales. Akhbari, 1-75-76. She admitted that she could not identify any individual person who fell into that category. Akhbari, 1-91-92.

Notwithstanding Dr. Akhbari's speculations, the law on this is well settled. The loss is limited to those purchasing after February 26, 2002. There is no loss arising from a securities violation to someone who holds a security and decides not to sell it. *Walck v. American Stock Exchange, Inc.,* 687 F.2d 778, 790 (3rd Cir. 1982), *cert. denied,* 461 U.S. 942, 103 S. Ct. 2118 (1983) ("Appellant cannot predicate liability on any activities … that induced them to 'retain'" stock); *V.T. Investors v. R & D Funding Corp.,* 733 F.Supp. 823, 832 (D. N.J. 1990) ("Shareholders who allege that they decided not to sell their shares because of an unduly rosy representation or a failure to disclose unfavorable material are thus precluded from bringing a private action under Rule 10b-5"); *Konstantinakos v. Federal Deposit Ins. Corp*., 719 F.Supp.

35, 37 (D.Mass. 1989) ("Where a misrepresentation or omission causes a person to retain shares previously purchased, rather than purchase new shares or sell already owned ones, the shareholder does not have standing to bring a 10b-5 claim"); *Troyer v. Karcagi*, 479 F.Supp. 1142, 1148 (S.D.N.Y. 1979) ("where it is alleged that a misrepresentation or omission by Karcagi induced the 'mere retention' of the discretionary counts by the Troyers, no claim under Rule 10b-5 can be asserted"); *cf., Blue Chip Stamps v. Manor Drug Stores,* 421 U.S. 723, 734-735 (1975) ("a putative plaintiff, who neither purchases nor sells securities but sues instead for intangible economic injury such as loss of a noncontractual opportunity to buy or sell, is more likely to be seeking a largely conjectural and speculative recovery in which the number of shares involved will depend on the plaintiff's subjective hypothesis").

Dr. Akhbari acknowledged that she did not have information to determine how many people had purchased the stock prior to February 26, 2002 and held it through February 14, 2003. Akhbari, 1-96 ("Q. Was that information made available to you? A. No.") The government, however, did have that information. It produced Exhibit 39(b), a listing of shareholders who held certificates of MCSi stock. The list includes for each shareholder the date the certificate was issued, the number of shares and, if applicable, the date the certificate was canceled upon sale of the stock.

From that information, Special Agent Gross prepared Exhibit 39c identifying those shareholders who held their stock at any time between January 15, 2003 and February 14, 2003. Exh. 39c; Gross, 1-19. There are 284 different shareholders listed on Exhibit 39c. Gross, 1-20. But as the exhibit reflects, the great bulk of those had purchased their shares prior to February 26, 2002. Only 42 shareholders (*see* attached highlighted Exhibit 39c) bought after the Mercatum information made its way to the public February 26, 2002.

Those 42 shareholders purchased a total of 263,571 shares after February 26, 2002. Attached as Exhibit S is a listing of the 42 highlighted in the attached Exhibit 39c. For each shareholder, Exhibit S includes the information – all taken from Exhibit 39(b) – as to the number of shares purchased, the dates the shares were issued and, if applicable, cancelled.

Three names in particular jump out in Exhibits 39c and S. Numbers 9 and 231 are Jonathan Barry and David White, both of Yorkshire, England, who were the two principals of Mercatum with whom the Mercatum transaction was negotiated and put together. Mr. White, at the time a subject of the government's investigation, is discussed at length in Mr. Funk's 2006 report, Government Exh. 46. Mr. White accounted for 166,902 of the MCSi shares purchased after February 26, 2002 included in Exhibit 39c, and Mr. Barry accounted for another 26,802 of these shares. Each certainly had full knowledge of the details of the Mercatum transaction, and with such information they can have suffered no loss. The third name is Mr. White's father, an investor in Mercatum whose logistics business worked with the company (shareholder number 268 in Exhibit 39c). Like his son, he would have no claim of loss. Excluding those three shareholders, the total number of shares purchased after February 26, 2002 by the shareholders listed in Exhibit 39c is 49,157. If the per share loss numbers of the Probation Department or Dr. Akhbari were correct, total loss would not be measured in the millions, but in the thousands: [6]

		Dr. Akhbari's per share loss figure	Probation Department's per share loss figure
		$2.90785	$0.87
Affected shares (with Mercatum principals)	263,571	$766,425	$229,307

[6] Neither the government's Exhibits 39(b) nor 39c includes people who held their MCSi stock in street name because, for example, it was in a brokerage account. Since the government has offered no information as to those persons, there is no basis on this record for drawing any conclusions as to their shares. One could speculate that since shares in certificate form accounted for about 10% of all shareholdings, the numbers in the chart could be multiplied by 10 – and maybe that is how the government reached its $400,000 number for Mr. Stanley. But there is no evidence presented to support that, or any other conclusion.

Affected shares without Mercatum principals	49,157	$142,941	$42,767

2. The government cannot establish a per share loss that resulted from the Mercatum transaction.

While she had never done an analysis linking securities fraud to a loss before, Dr. Akhbari applied the generally accepted approach of an event study to isolate the value of information that was made public during the time period between January 15 and February 14, 2003. It was her testimony that the decline in price of MCSi stock in that time period evidenced "some extraordinary bad news" about the Company that was flowing into the marketplace. Akhbari, 1-52. Upon cross examination, she conceded that none of that bad information reflected the $37 million net sales overstatement from the Mercatum transaction.

The four pieces of information that were made public during that time period (Akhbari, 1-98) and moved the stock significantly were:

- The January 15, 2003 SEC enforcement action filed against MCSi's competitor and supplier ClearOne. Exh. L. Mentions MCSi as a purchaser of ClearOne products in ¶¶ 40, 46-47. No implication that MCSi had done anything wrong; no reference to Mercatum or MCSi financials at all.

- The filing of private securities lawsuits against MCSi in January and February, 2003 – all of which related to information allegedly not disclosed leading up to the February 26, ***2002*** earnings report that caused the stock to drop 40%. No reference to Mercatum (Mercatum numbers not in any of the challenged financials). Akhbari, 1-103.

- The response MCSi publicly made to the securities lawsuits – that it would "vigorously defend them." Exh. H.

- On February 14, MCSi announced that it had received a subpoena for records in connection with an ongoing SEC investigation. Exh. E. The announcement of the investigation made no reference to Mercatum, no reference to accounting issues, no reference to prior public statements made by MCSi.

As of the end of that time period, the information as to the $37 million net sales overstatement of 2001 was still not public information affecting the price of the stock.

On those facts, the law is very clear.

a. The government's evidence, if included in a civil complaint, would not survive a motion to dismiss.

First, if all of the evidence that the government presented on loss from the securities fraud in this case were set out as allegations in a civil complaint for securities fraud, this Court would dismiss the complaint for failing to establish any loss caused by the misrepresentations. In the civil setting, a plaintiff must establish "a causal connection between a material misrepresentation and the loss." *Brown v. Earth Board Sports USA, Inc.*, 481 F.3d 901, 920 (6th Cir. 2007) (quoting *Dura*, 544 U.S. at 342). As the Sixth Circuit held in *Indiana State Dist. Council v. OmniCare, Inc.*, 583 F.3d 935, 944 (6th Cir. 2009), "price inflation alone is insufficient; rather, a plaintiff must show that an economic loss occurred ***after the truth behind the misrepresentation or omission became known to the market***" (emphasis added). *See also Local 295 v. Fifth Third Bank Corp.*, 731 F.Supp. 2d 689 (S.D. Ohio 2010) ("complaint fails to establish loss causation with respect to many of the misrepresentations and omissions alleged because the press release did not contain any disclosures or corrections addressed to them").

That conclusion followed directly from *Dura Pharmaceuticals v. Broudo*, 544 U.S. 336 (2005). In *Dura*, the issue was exactly what loss causation evidence must be asserted – at the pleading stage – to support a 10b-5 complaint. As here, the issue involved false statements about financial results of a publicly traded corporate defendant. Justice Breyer, writing for a

unanimous Court,[7] concluded that persons who purchased the stock immediately after the false information went to the marketplace were not at that point injured:

> For one thing, as a matter of pure logic, at the moment the transaction takes place, the plaintiff has suffered no loss; the inflated purchase payment is offset by ownership of a share that at that instant possesses equivalent value. Moreover, the logical link between the inflated share purchase price and any later economic loss is not invariably strong.
>
> * * *
>
> If the purchaser sells later after the truth makes its way into the marketplace, an initially inflated purchase price might mean a later loss. But that is far from inevitably so. When the purchaser subsequently resells such shares, even at a lower price, that lower price may reflect, not the earlier misrepresentation, but changed economic circumstances, changed investor expectations, new industry-specific or firm-specific facts, conditions, or other events, which taken separately or together account for some or all of that lower price.
>
> *Dura*, 544 U.S. at 343-344.

It was only after the false information has been corrected in the marketplace and the stock price fell in reaction to that information that a person can be said to have a loss. Even then, there remains a question of whether the securities fraud has caused the loss or some other of the numerous factors that affect price:

> Given the tangle of factors affecting price, the most logic alone permits us to say is that the higher purchase price will sometimes play a role in bringing about a future loss. It may prove to be a necessary condition of any such loss, and in that sense one might say that the inflated purchase price suggests that the misrepresentation (using language the Ninth Circuit used) "touches upon" a later economic loss. But, even if that is so, it is insufficient. To "touch upon" a loss is not to cause a loss, and it is the latter that the law requires.

[7] The Supreme Court was reversing a decision by the Ninth Circuit, whose "views about loss causation differ from those of other circuits that have considered this issue." 544 U.S. at 340.

> *Dura*, 544 U.S. at 344 (citations omitted).

Applying the teaching of *Dura* and *Local 295* to the evidence before this Court on this issue, false information first entered the marketplace February 26, 2002. It was not separately identified but was a part of the net sales figure for the Company, overstated by 4.6%, and presumably part of the net income for the year which would likely have been a greater loss than it was. The extent of that greater loss is not known.

The government's problem is showing the economic loss occurring "after the truth behind the misrepresentation or omission became known to the market." *Omnicare*, 583 F.3d at 944. The facts here parallel exactly those alleged in *Local 295 v. Fifth Third Bank*, 731 F.Supp. 2d 689 (S.D. Ohio 2010), in which this Court dismissed those securities fraud claims for which the subsequent disclosures "did not contain any disclosures or corrections addressed to" the prior misrepresentations. There is simply no evidence that the truth on the Mercatum transaction became known at any time prior to MCSi's June 3, 2003 bankruptcy. By that point, the stock was worth 6¢ a share. Exh. 10. No one has testified nor could anyone testify that the 6¢ value was somehow inflated by a $37 million overstatement of net sales from a year and a half earlier. There simply was no loss in securities value associated with the Mercatum transaction.

b. The *Dura* standard for proximate cause in a civil securities claim is the same standard for loss, from securities fraud under the Sentencing Guidelines.

Most Circuits who have considered the issue have concluded that the principles of *Dura* apply directly to loss calculations in securities fraud cases under §2B1.1 of the Sentencing Guidelines. *See United States v. Rutkoske*, 506 F.3d 170, 180 (2nd Cir. 2007) (*Dura* applies to loss calculation under Sentencing Guidelines; vacating district court's sentence because its estimate of the loss caused by the defendant's fraud failed to take into account "other factors

relevant to a decline in" the company's "share price"); *United States v. Olis*, 429 F.3d 540, 546 (5th Cir. 2005) (*Dura* applies; "the civil damage measure should be the backdrop for criminal responsibility both because it furnishes the standard of compensable injury for securities fraud victims and because it is attuned to stock market complexities"); *United States v. Nacchio*, 573 F.3d 1062, 1078 (10th Cir. 2009) (applying *Dura*; "criminal cases have the same 'tangle of factors affecting price' … that is found in civil cases," internal citations omitted). Dr. Akhbari, having reviewed the literature on the relationship between securities fraud and loss, did her best to follow the principles of *Dura* in her analysis:

> Q. Did you seek to apply the principles of *Dura Pharmaceuticals* to your analysis?
>
> A. To the best of my ability.
>
> Dr. Akhbari, 1-97.

If *Dura* applies, the evidence the government has presented utterly fails to establish any loss caused by Mercatum or by Mr. Peppel.

c. The government's evidence does not satisfy even the Ninth Circuit test for establishing a securities loss.

The government urges that this Court reject the teachings of *Dura* related to what is and is not a causal relationship in securities fraud and adopt instead the Ninth Circuit test as set out in *United States. v. Berger*, 587 F.3d 1038 (9th Cir. 2009). On these facts, however, *Berger* does not help the government. Although the *Berger* court declined to follow *Dura*, it still rejected the district court's analysis that did not meet Ninth Circuit requirements that the "government must show both 'but-for' and 'proximate' causation in establishing loss." 587 F.3d at 1043 (describing the holding in *U.S. v. Hicks*, 217 F.3d 1038 (9th Cir. 2000)). The court then set forth what the district court was to do on remand:

> whatever method is chosen should attempt to gauge the difference between Craig's share price – as inflated through fraudulent representation – and what that price would have been absent the misrepresentation.

587 F.3d at 1046-1047.

Here the government has completely failed to offer the Court any way "to gauge the difference between [MCSi's] share price – as inflated through fraudulent representation – and what that price would have been absent the misrepresentation." *Id*. Dr. Akhbari made no attempt and agreed she could make no attempt to measure that difference:

> Q. And did you make any effort to determine how far the stock would have fallen that day [February 26, 2002] if the $37 million revenue from Mercatum had not been included?
>
> A. I did not.
>
> * * *
>
> Q. And in terms of what the market value impact of removing that $37 million as of that date, that would only be speculation?
>
> A. Correct.

Akhbari, 1-78-79.

With no basis to gauge the impact of the fraud on the stock price, the Government has failed to establish any evidence of securities fraud loss, even under the Ninth Circuit test.

3. Other proposed loss numbers provide no more basis for a finding of loss than Dr. Akhbari's approach.

The government has offered the Court several other numbers besides Dr. Akhbari's $62 million. SEC accountant Scott Hlavacek started the parade when the government embraced his loss figure of $298,119,295.80. Dr. Akhbari examined Mr. Hlavacek's analysis and dismissed it as simplistic. Akhbari, 1-90-91 ("On many levels it was, I think, an unsophisticated attempt"). Notwithstanding that fact, the government continued, well after it had hired Dr. Akhbari in December 2010, Akhbari, 1-61, to advocate the $298 million number. Final Presentence Report,

April 14, 2011, Addendum, 48 ("The government objects to the loss calculation proposed by the probation officer and asserts that the appropriate loss figure is $298 million").

The Probation Department has another calculation that drives an $18.2 million number in the Amended Presentence Investigation Report. It is based upon total affected shares of 21,330,212 and a per share loss of 87¢. Final Presentence Investigation Report, ¶¶132-135. Here too, the number of shares of stock used by the Probation Department correctly address the many shareholders who had purchased prior to February 26, 2002 and therefore had not paid an inflated price. Applying the 49,157 shares that were actually purchased by someone other than a Mercatum principal after February 26, 2002 from Exhibit S, the 87¢ Probation Department per share loss would drive a loss number of $42,767.

The Probation Department's approach on per share loss assumes the stock price after February 26, 2002 had a premium for the Mercatum transaction just as in Dr. Akhbari's approach. It then assumes that 100% of the decline in the stock immediately following the February 14, 2003 announcement of the SEC investigation reflected the value of the Mercatum transaction. As with Dr. Akhbari's analysis, the approach ignores the fact that there was no disclosure about Mercatum, about financials, or any specifics in that announcement:

> DAYTON, OHIO - February 14, 2003 - MCSi, Inc. (Nasdaq: MCSI) today announced that it has learned of an investigation of the Company by the United States Securities and Exchange Commission and has received a subpoena from the SEC seeking production of documents. The Company intends to cooperate fully with the investigation. MCSi cannot now predict the course or outcome of the investigation or whether additional information will be sought.

Exh. E.

Courts consistently hold that where an announcement of an SEC investigation does not disclose the fraud at issue, as MSCi's February 14 announcement plainly does not, the

announcement cannot provide the required causal connection between the fraud and any investor loss. *See Durham v. Whitney Info. Network, Inc.*, 2009 WL 3783375, at *22 (M.D. Fla. Nov. 10, 2009) (loss causation not satisfied because the company's announcement of an SEC investigation did not "sufficiently establish a connection between the specific alleged fraudulent activity (the three theories of fraud) and the drop in stock. Indeed, there is no connection between the text of the press releases and the theories of fraud"); *In re Maxim Integrated Prods., Inc. Sec. Litig.*, 639 F.Supp. 2d 1038, 1047 (N.D. Cal. 2009) (loss causation not satisfied; company's "disclosures regarding compliance with an SEC investigation [and] subpoenas from the United States Attorney's office ... do not reveal the alleged fraud"); *In re Dell, Inc. Sec. Litig.*, 591 F.Supp. 2d 877, 910 (W.D. Tex. 2008) (announcement of an SEC investigation did not satisfy loss causation; "nor does the disclosure of an investigation, whether conducted internally or by the SEC, absent a revelation of prior misrepresentations, constitute a corrective disclosure for purposes of loss causation"); *In re Take-Two Interactive Sec. Litig.*, 551 F.Supp. 2d 247, 285-86 (S.D.N.Y. 2008) (disclosure of grand jury subpoenas did not satisfy loss causation because "if a plaintiff relies upon a particular disclosure as the basis for his loss causation allegations, that disclosure must somehow reveal to the market some part of the truth regarding the alleged fraud .... [T]he nexus between the June 26 Disclosure and the Options Backdating Fraud is far too tenuous to permit the inference that the former unveiled some part of the fraudulent nature of the latter"); *In re Hansen Natural Corp. Sec. Litig.*, 527 F.Supp. 2d 1142, 1162 (C.D. Cal. 2007) (loss causation not satisfied because the company's announcement of an SEC investigation did not "contain a disclosure of wrongdoing").

Like Dr. Akhbari's analysis, the circumstances that the Probation Department identified provide no basis under *Dura* or the Ninth Circuit test for reaching a causal link between the securities fraud here and market or investor loss.

Finally, there is the number that is the government's conclusion in Mr. Stanley's plea:

> The parties stipulate that the loss for § 2B1.1(b)(1) purposes is between $400,000 and $1,000,000.
>
> Stanley Plea, Exh. C.

No witness was able to identify where the $400,000 and $1 million numbers in the Stanley plea came from. Gross, 1-27-28; Akhbari, 1-73; Geraghty, 2-99. It therefore provides no basis for an upward adjustment in the sentencing guidelines. What it does highlight is the arbitrariness of the government's array of numbers – $298 million, $62 million, $18.2 million, $400,000. *See United States v. Olis*, 429 F.3d 540, 547 n. 11 (5th Cir. 2005) ("The Government does not further the goals of sentencing uniformity or fairness when, as seems to be happening in these cases, the Government persistently adopts aggressive, inconsistent, and unsupportable theories of loss").

4. The proffered evidence of bank fraud loss provides no basis for loss here.

Understanding that it could prove no loss based on securities fraud, the government brought out, at the last minute, an expert to testify about purported losses to the Company's bank lenders that he alleged somehow arose from the Mercatum transaction. The theory of Mr. Geraghty's testimony was that MCSi's bankers had some $88.5 million in loans to the Company outstanding and unrecoverable after the Company was liquidated in bankruptcy, and that all of the lenders' losses resulted from the $37 million overstatement of the Company's 2001 net sales in the Company's February 2002 earnings release and subsequent Form 10-K. To reach that conclusion, Mr. Geraghty performed a specious and speculative recalculation of the "Consolidated Total Debt/Consolidated EBITDA Ratio" covenant in Section 9.7 of the

Company's credit agreement as of December 31, 2001, assuming without basis that the Mercatum transaction caused the Company's *net income* to be overstated by $37 million and concluding, wrongly, that the Company would have been in breach of the covenant if the effects of the Mercatum transaction were removed from the Company' financial results. Exh. O, page 37 *et. seq.* (Amended and Restated Credit Agreement).

a. MCSi's lenders have no loss from securities fraud – the relevant offense here.

The heart of the Government's charges against Mr. Peppel in this case is securities fraud. He was never charged with bank fraud. Indictment (docket no. 3); Superseding Indictment (docket no. 54). Indeed, neither indictment in this case mentions MCSi's lenders at all. *Id.* He did not plead guilty to bank fraud. Docket no. 179; Exhibit 39. Nonetheless the government, at the last moment, has decided it wants to demonstrate loss resulting from fraud purportedly perpetrated upon MSCi's banks.

Securities fraud in this country is the making of false statements in connection with the "purchase or sale of a security." It does not deal with information provided to lenders. It is clear, as a matter of law, that the banks suffered no securities fraud loss. Securities Exchange Act of 1934, §10(b); *Blue Chip Stamps v. Manor Drug Stores,* 421 U.S. 723 (one who neither buys nor sells securities has no claim under §10(b) of Rule 10b-5). Thus, for example, in the case the government repeatedly cites and relies upon, *United States v. Berger,* 587 F.3d 1038 (9th Cir. 2009), the defendant was convicted of securities fraud violations and loan fraud violations – receiving millions of dollars in loan proceeds "based on either nonexistent or substantially overstated collateral." 587 F.3d at 1040. The court found a $3.14 million loss to the banks the result of the loan fraud and, separately identified a $2.1 million shareholder loss. 587 F.3d at 1041.

The only authority that the government can find for taking into consideration, under the Sentencing Guidelines for securities fraud, the losses suffered by a lender is *United States v. Paul*, 634 F.3d 668 (2nd Cir. 2011), a case that is manifestly inapplicable. First, and contrary to what the government suggests in its briefing, *Paul* dealt with restitution, not enhancements under the Sentencing Guidelines. And its facts have no bearing on this case. In *Paul*, the defendant manipulated outside trading data about a security, such as its trading volume and the price and number of bids for it, not financial data or other information about the Company's financial performance. The purpose of the fraud was not to mislead the Company's investors, but rather to inflate the value of securities held by the defendant as collateral for margin loans. While the government says the case involved "banks who extended loans to securities fraud defendant," Government Loss Memo, 4 (Docket no. 196), in fact the loans were provided by the defendant's brokerage house. In addition, the loans were made through nominee accounts that the defendant fraudulently created and "that he fully controlled, but maintained under other names to mask his involvement." 634 F.3d at 670. Ultimately the court concluded that the loans would never have been made but for the fraud in creating the accounts, which was part and parcel of the securities fraud. Clearly, such facts are dramatically removed, on every level, from those before this Court. It is not appropriate to consider the banks losses here as somehow the result of the Mercatum transaction.

Again unlike *Paul*, the loss that the banks experienced in this case resulted directly from the financial failure of the Company which, while it may have started under Mr. Peppel's leadership, had nothing to do with the Mercatum transaction or its disclosure to the marketplace. It was quite plainly a function of factors unrelated to the Mercatum transaction which saw the market for the Company's products and services decline in the months and years following

September 11, 2001, which decline continued after Mr. Peppel left the Company in March of 2003. Indeed, that decline was in no way halted under the financial leadership of the Government's new-found expert witness, Mr. Geraghty.

b. The bank loss calculation rests entirely upon speculation in two areas – the covenant calculation itself and how the lenders might have reacted to the covenant calculation.

Beyond the clear legal problem of including alleged lender losses in a securities fraud loss calculation under the Guidelines, the government's theory of loss is not supported by a factual basis. Rather, it is premised on the convoluted, speculative, and demonstrably inaccurate factual argument that if the Mercatum transaction had caused the Company to avoid breaching its debt to EBITDA ratio covenant for the year ended December 31, 2001, the Company's lenders would have called their loans as soon as they became aware of the breach and thereby avoided losses in bankruptcy (losses that the government cannot even correctly quantify). The government has not established any element of this argument, and, in fact, each element is demonstrably wrong.

The assertion that the lenders would have called their loans if the Company breached its debt to EBITDA covenant in early 2002 is highly speculative and clearly contradicted by the evidence before the court. Although Mr. Geraghty insinuated much about what the lenders might have done upon such a breach, the only specific, concrete action he was willing to commit to in his testimony was that the lenders "kind of call a time out," Geraghty, 1-144, and perhaps required the Company to get outside assistance to better focus its financial plans or otherwise make performance improvements as a result of the covenant breach. These hardly would have been major events in the relationship between the Company and the lenders, and there is no indication that such actions would have prevented any loss to the lenders whatsoever.

Moreover, the notion that the lenders would have taken even the minimal action of calling a "time out" at this time seems highly questionable. In the first place, Mr. Geraghty testified that the lenders learned in December 2001, that the Company's performance for the year ended December 31, 2001 was going to be abysmal, and yet they took no action against the Company at all. Geraghty, 2-25, 2-39. By the time the Company would have actually experienced Mr. Geraghty's purported financial covenant breach, the lenders would have long since known that the Company's 2001 financial performance fell far below expectations. Any breach that did occur would not have given the lenders new information about the Company's financial performance, but rather it merely would have confirmed information the Company gave to them in December. The lenders did not accelerate the loans, call a "time out," or take any other action when they were first apprised of the Company's dramatic and unexpected financial failures in December 2001, and it is absurd for Mr. Geraghty to speculate that they would have taken any action at all, much less exercised the "nuclear option" of calling the loans, when they were reminded of this old news by a covenant breach based on the same data two months later.

Likewise, Mr. Geraghty testified that the lenders were in the long established habit of relaxing the Company's financial covenants when its performance was not consistent with plan and therefore would have resulted in a breach of the financial covenants. Geraghty, 1-164 *et. seq.* The notion that the lenders would have used this particular covenant breach as a cause for acceleration rather than a cause for the renegotiation of the covenant levels is highly suspect. He acknowledged, again on cross-examination, that in the real world, banks do not pull all of their financing just because one covenant is missed in one quarter. Geraghty, 2-144. Mr. Geraghty likewise acknowledged in cross-examination that the same banks who he says might have done something had MCSi missed its covenant kept extending credit even at the point of the

Company's distress and bankruptcy filing the following year. Geraghty, 2-45, 2-105. So Mr. Geraghty's contention that the lenders would have called the loans and cut their losses if they had been aware that the Mercatum transaction was inflating income and therefore the calculation of EBITDA is legally inadequate speculation and largely contradicted by his own testimony.

Not only are Mr. Geraghty's speculations about the action that lenders might have taken if the covenant had been breached highly suspect, but his conclusion that removing the Mercatum would have caused the Company to breach the covenant is entirely wrong for a number of reasons. First, a basic and fatal problem with Mr. Geraghty's approach is that, to do his calculation and reach the conclusion he wanted to reach, he had to assume that the entire $37 million in net sales from the Mercatum transaction produced $37 million in net income to MCSi – that is, that there was a 100% margin on the transaction or zero cost of goods sold associated with it. He made that assumption notwithstanding the fact that there is no evidence in the record as to what the cost of goods sold on that transaction was, much less that the cost of goods sold was zero. And he acknowledged, on cross-examination, that if a cost of goods sold was in fact recorded, his calculation would have come out differently. Indeed, if the cost of goods sold for the Mercatum transaction was any of the non-zero amounts contemplated in the Funk report, or, indeed, as little as $2.2 million – a margin of 94% – the Company would have been in compliance with the covenant even using Mr. Geraghty's flawed calculation methodology.

Likewise, Mr. Geraghty's interpretation and calculation of the covenant are biased, arbitrary, and wrong, and correcting his mistakes makes clear that the Company would have been in compliance with the covenant even with the Mercatum transaction removed from its results. The Company's Amended and Restated Credit Agreement, a detailed and carefully negotiated document, provides instructions on how to calculate the debt to EBITDA ratio. For purposes of

this covenant, the Credit Agreement provides that EBITDA is calculated by starting with the Company's GAAP net income for the period and then making certain adjustments, including increasing the figure by the amount of any "extraordinary (and other one-time) non-cash losses and charges" the company incurred during the period. Exh. O, page 43. While, as Mr. Geraghty correctly stated, "extraordinary charges" are defined under GAAP and are not relevant to this discussion, the expression "other one-time losses and charges" is not an accounting term of art, but instead is a common and borrower-friendly negotiated addition to the EBITDA definition that expands the "add back" to net income to include costs that the Company believes are outside the ordinary course of business and unlikely to recur in the near future. There are three items, set forth in the table below, totaling $7.1 million, readily identifiable in the Company's 10-K for the year ended December 31, 2001 that fall within this definition, and the Company would have complied with the covenant even with the Mercatum sales removed if less than a third of the dollars from these items had been included in the EBITDA calculation.

Non-cash restructuring charges related to abandonment of certain business	$4.9 million	Exhibit P. (Form 10-K for December 31, 2001), page 21
Non-recurring portion of non-cash provision for receivables owned by distressed customers after September 11	$2.0 million	Exhibit P, pages 21 and 23
Non-cash portion of restructuring charges arising from Zengine acquisition	$0.17 million	Exhibit P, page 22

Clearly, each of these items (each of which is indisputably non-cash), which relate to the total abandonment of a business, the economic effects of the September 11th terrorist attacks, and an important acquisition of a particular business, respectively, are not ordinary course and not things the Company would have expected to recur. Needless to say, because he was seeking a

particular result and not an accurate calculation, Mr. Geraghty ignored all these items in his calculation of EBITDA.

Section 8.1(c) of the credit agreement provides that the ratio of debt to EBITDA and other financial covenants are to be calculated by the Company's chief financial officer or other responsible officer, and the agreement does not give the lenders any right to dispute these calculations. Exh. O, page 83. Moreover, the defendant is not aware of any case in which the federal courts, the Ohio state courts, or the New York state courts have ruled on which items should be included in EBITDA for purposes of the financial covenants in a credit agreement, nor is he aware of any instance of bank lenders litigating with a company in these courts over which items should be included in the calculation. Thus, the Company's accounting and financial personnel had great discretion under both applicable law and the terms of the credit agreement over what items would and would not be included in the EBITDA calculation. Mr. Geraghty's theory of loss is premised on the assumption that, but for the Mercatum transaction, the Company would have reported a breach of the debt to EBITDA covenant in February 2002, and the lenders would have called the loans as result of that breach. For purposes of evaluating this theory, then, the important question is not whether the items listed above are correctly included in EBITDA as an academic matter, but, instead, whether the Company's finance personnel would have, in their discretion, actually included them in this calculation. Because each of these items is, in fact, correctly included in EBITDA as an academic matter, there should be little doubt that the company's finance personnel, who had greater leeway, would have included them in the calculation. Despite his stubborn advocacy of his own, incorrect calculation of the covenant, on cross-examination Mr. Geraghty acknowledged that the calculation depended heavily on the discretion of the person doing the calculation. Geraghty, 2-143.

Putting aside the questions of how the covenant should be calculated and what the lenders would have done if it had been breached, the government has not and cannot possibly offer any evidence that suggests that Mr. Peppel's conduct proximately caused any loss whatsoever to the lenders, and indeed there are very strong indications from the record that the banks would have been repaid in full if Mr. Geraghty, as interim CFO for the Company, and other members of the new management team had either entirely avoided the bankruptcy process or liquidated the Company immediately. Indeed, the Company's bankruptcy petition, which discloses the Company's asset position *after* Mr. Geraghty's arbitrary $80 million write-down of assets, shows total assets of approximately $181 million, more than twice what was necessary to cover all the Company's obligations under the credit agreement. Exhibit A to the Bankruptcy Petition of MCSi, Inc., filed with the United States Bankruptcy Court for the District of Maryland, Case 03-80169, June 3, 2003. Of course, neither one of these courses of action would have gotten Mr. Geraghty's employers the massive fee they collected at the expense of the lenders and the Company's other creditors.

When Mr. Geraghty took over as CFO, the Company was in the process of successfully negotiating a forbearance agreement that kept the lenders from calling the loans, and, indeed, the fact that lenders were interested in finding the Company a "turnaround specialist", suggests that they believed that the Company remained viable and able to make good on its obligations under the credit agreement, in a non-bankruptcy setting, after Mr. Peppel departed. On the other hand, the Company's bankruptcy filings make clear that there were plenty of assets to pay the lenders at the time Mr. Geraghty took over, and, notwithstanding Mr. Geraghty's assertions to the contrary, the bankruptcy court's records show that the residual assets of the Company, *i.e.*, the least saleable and least valuable ones, were ultimately liquidated at nearly fifty percent of *book*

value. Given that the Company's bankruptcy petition reflected assets with a book value nearly $181 million, it seems very likely that the lenders would have been paid in full if Mr. Geraghty had taken steps to liquidate the Company immediately upon his arrival. On cross-examination, Mr. Geraghty admitted this possibility. Geraghty, 2-52.

By Mr. Geraghty's own account, a reorganization in bankruptcy would have been suicide for the Company because it was primarily in the contracting business at the time, and, as Mr. Geraghty explained, key clients doing contract business "don't want to do business with bankrupt entities, particularly long-term contract companies." Geraghty, 2-20. Unfortunately, attempting to reorganize the Company in bankruptcy is precisely what Mr. Geraghty and his colleagues did do. Presented with viable courses of action that might have saved the Company or, at the very least, prevented or mitigated the lenders' losses, Mr. Geraghty and his fellows instead chose the one course sure to bring the Company to a slow and certain death. Worse, because the Company, its business further compromised by the stigma of bankruptcy, was incurring substantial losses throughout 2003, the more than nine-month delay his failed efforts to reorganize the Company imposed on the liquidation process further diminished the assets available to the lenders. Although he carefully avoided the issue in his direct testimony, Mr. Geraghty was clearly aware of his role in causing the lenders' losses. When pressed on cross examination, Mr. Geraghty could not dispute that the $85 million loss he said resulted from the Mercatum transaction was equally the result of subsequent actions the banks and the Company (including when Mr. Geraghty was acting as MCSi's Chief Financial Officer) took between the time that Mr. Peppel left the Company and the time the Company was ultimately liquidated.

Likewise, Geraghty's spontaneous write-down of the Company's assets when he became CFO is highly suspect. He testified that he scrubbed items he, in his sole discretion, "thought

were overstated," writing the Company's assets down by approximately $80 million. Geraghty, 2-47. Mr. Geraghty had every reason to make an over zealous write-down of the Company's assets. By placing the Company in such a weak asset position, he would have been more of a hero if he had succeeded in turning around the Company and would have had far more of an excuse if he failed, which of course, he ultimately did.

On the bank fraud loss, like the securities fraud loss, the government cannot meet its burden of proof and establish any loss.

II. Number of victims.

The government seeks here the maximum enhancement of 4 levels for an offense with 250 or more victims:

> (Apply the greater) If the offense –
>
> (A)(i) involved more than 10, but less than 50, victims; or (ii) was committed through mass-marketing, increase by 2 levels; or
>
> (B) involved 50 or more victims, increase by 4 levels.
>
> U.S.S.G. §2B1.1(b)(2)

Again, the government has the burden of proof on facts underlying the enhancement. To meet that burden, the government must offer facts, not estimates. *United States v. Showalter*, 569 F.3d 1150, 1160 (9th Cir. 2009) ("The Guidelines do not, however, allow a district court to 'estimate' the number of victims to enhance a sentence under §2B1.1(b)(2)").

Because the securities loss here was zero, there were no victims. Even if the government's theory of loss were correct, the number of victims is dramatically smaller than what it argues.

1. The government's evidence demonstrates 39 potential victims, not 284.

The government offered evidence in the form of Exhibit 39c listing, according to the testimony, 284 separate shareholders of record of MCSi stock during the timeframe from January 15, 2003 to February 14, 2003. Gross, 1-19 - 1-20; Exhibit 39c. In fact, the exhibit shows no such thing. The exhibit includes 284 accounts to be sure. But those accounts are mostly persons who purchased their stock before – usually well before – February 26, 2002, at a time when there was no information in the market or in the stock price related to the Mercatum transaction. None of those persons was harmed; none was a victim. Removing all of those non-victims (as well as Jonathan Barry and David White, the Mercatum principals who knew all about the Mercatum transaction, and David White's father, who worked with Mercatum as well) leaves those persons who purchased MCSi stock after February 26, 2002 (paying what the government argues was an inflated price), 39 shareholders. They are identified in Exhibit S to this brief, which is cross-referenced to the page numbers of the government's Exhibit 39(b) and the shareholder names and numbers from Exhibit 39c (highlighted copy attached to brief as well). That is the sum and substance of evidence, based on the government's records, of the number of persons whom the government believes were harmed.

III. Sophisticated means.

The government argues for a 2-level enhancement based upon the use of "sophisticated means:"

> If (A) the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials; (B) a substantial part of a fraudulent scheme was committed from outside the United States; or (C) the offense otherwise involved sophisticated means, increase by **2** levels. If the resulting offense level is less than level **12**, increase to level **12**.
>
> U.S.S.G. §2B1.1(b)(8) (2002).
>
> Sophisticated Means Enhancement.—For purposes of subsection (b)(8)(C), "sophisticated means" means especially complex or

> especially intricate offense conduct pertaining to the execution or concealment of an offense. For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating soliciting operations in another jurisdiction ordinarily indicates sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts also ordinarily indicates sophisticated means.
>
> Commentary to U.S.S.G. §2B1.1(b)(8)(2002)

On the facts, the government has not and cannot establish a basis for such enhancement.

1. There is no evidence here of the use of sophisticated means as would justify the additional enhancement the government seeks.

The structure of § 2B1.1(b)(8) indicates what it was that it was intended to cover. That structure is two specific examples of circumstances that involve sophisticated means – relocating or participating in relocating to another jurisdiction to evade law enforcement officials and committing the offense from outside the United States. The final phrase then talks about "the offense otherwise involv[ing] sophisticated means." Under the principle of statutory construction *ejusdem generis*, those general words in the third phrase "are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." *Washington State Dept. of Social & Health Service v. Guardianship Estate of Keffeler*, 537 U.S. 371, 384-85 (2003); *United States v. Mabry*, 518 F.3d 442, 447 (6th Cir. 2008) ("Where a statute lists specific things followed by a more general one, the canon of *ejusdem generis* provides guidance"); *Canton Police Benev. Ass'n of Canton v. United States*, 844 F.2d 1231, 1236 (6th Cir. 1988) ("the time-honored rule of *ejusdem generis*, i.e., that a general word in a statute takes its character from the specific words with which it appears"). Courts have regularly applied *ejusdem generis* to the Sentencing Guidelines. *United States v. Walker*, 393 F.3d 819, 824-827 (8th Cir. 2005); *United States v. Thomas*, 361 F.3d 653, 659 (D.C. Cir.2004) (Construction of

U.S.S.G. §4B1.2; "when a statute or regulation begins with a list of specific categories and ends with a general catch-all, the interpretative canons of *ejusdem generis* ('of the same kind or class') and *noscitur a sociis* (a word is 'known by its associates') counsel that the latter be read in light of the former"); *United States v. Mendoza-Alvarez*, 79 F.3d 96, 99 (8th Cir.1996) (construction of U.S.S.G. §2K2.1(b)(2); "Under the interpretative maxim of *ejusdem generis*, a general term following more specific terms is held to apply 'only to other items akin to those specifically enumerated'"); *United States v. Holmes*, -- F.3d. --, 2011 WL 2410739 (9th Cir. 2011) (concurring opinion) (construction of U.S.S.G. §2K2.1(b)(2); "The traditional legal terms for taking account of context are *ejusdem generis* and *noscitur a sociis*").

The evidence on sophisticated means came through the expert testimony of Mr. Geraghty, the disgruntled former acting CFO of MCSi whose company had received nearly $4 million for its services of taking a struggling company and moving it into bankruptcy and ultimately liquidation. Mr. Geraghty testified that he believes that sophisticated means were used in the Mercatum transaction because:

- There were multiple invoices produced covering it (there were 3);
- The product was shipped out of the country (the purchaser was, in fact, out of the country and was buying the product for resale into third world countries);
- The subsequent acquisition by MCSi of the company that had purchased the product;
- The ultimate sale of the inventory to a United Arab Emirates concern; and
- The "bill and hold" nature of the transaction.

Geraghty, 1-152-154.

The government asked Mr. Geraghty if those indicia of the transaction had allowed the transaction to be concealed from the Company's auditors, PricewaterhouseCoopers. Tellingly, Mr. Geraghty was careful not to agree:

> Q. Was Price Waterhouse Coopers, based on your understanding of the facts related to this transaction, were they fooled? What's your reaction of what they played?
>
> A. Well, I never had any direct discussion with PricewaterhouseCoopers with regard to their particular comment on – on that transaction, but apparently they approved that transaction in some form or fashion and had some comfort level to it.
>
> Geraghty, 1-154.

In fact, on cross examination, Mr. Geraghty acknowledged that the entire transaction, including each of the elements he identified as the reasons why this was a sophisticated means, was laid out to, understood and approved by the Company's outside independent auditor, PricewaterhouseCoopers. Geraghty, 2-38, 2-57.

With respect to "sophisticated means" as described in the Sentencing Guidelines, it is very clear that Mr. Peppel and the MCSi operation involved in the Mercatum transaction did not move to a different jurisdiction to escape detection and did not operate from overseas to escape detection. So, the question is whether those elements of the Mercatum transaction which Mr. Geraghty identified qualify, under the principle of *ejusdem generis*, as similar in nature to moving jurisdictions or operating from out of the country. The answer is they clearly did not. All of that involves engaging in activity out of the ordinary in order to escape detection. Doing the Mercatum transaction in three invoices as opposed to one certainly was not out of the ordinary and did nothing to escape detection. One can keep walking down Mr. Geraghty's list. The most telling point here is that every one of those elements that Mr. Geraghty identified as indicating the use of sophisticated means was known by and approved by the Company's Board

and its outside auditors. Akhbari, 1-76-77; Geraghty, 2-38, 60-61. That is the opposite of concealment. That is doing what is supposed to be done.

The sophisticated means enhancement requires "especially complex or especially intricate offense conduct." U.S.S.G. §2B1.1(b)(8), Application Note 6(B). The Guidelines state that "hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts" will satisfy this definition. Mr. Geraghty's testimony does not satisfy this standard.

His testimony reveals no evidence of Mr. Peppel using fictitious entities, corporate shells, or offshore financial accounts. Moreover, the government has presented no evidence that Mr. Peppel hid the Mercatum transaction from PricewaterhouseCoopers. Instead, as discussed above, Mr. Geraghty admitted that the entire Mercatum transaction was explained to PricewaterhouseCoopers. Every one of the elements of the Mercatum transaction that Mr. Geraghty identified as indicating the use of sophisticated means was known by and approved by PricewaterhouseCoopers, as well as by MCSi's Board of Directors. In sum, the testimony of Mr. Geraghty – who provided the government's only testimony regarding "sophisticated means" – comes nowhere near the definition of "sophisticated means" in the Guidelines.

For these same reasons, the probation officer's conclusion that the "sophisticated means" enhancement applies is flawed. Contrary to the probation officer's conclusion, the Mercatum transaction was not in any way hidden from Pricewaterhouse Coopers. Again, Mr. Geraghty confirmed this in his testimony to the Court. Further, the probation officer does not even attempt to contend that Mr. Peppel used "fictitious entities, corporate shells, or offshore financial accounts." While the probation officer initially stated in the Presentence Investigative Report that Mr. Peppel used "fictitious entities to fraudulently recognized MCSi's corporate revenue,"

¶155, the Addendum to the Presentence Investigative Report implicitly retracted that assertion and made no mention of any use by Mr. Peppel of a fictitious entity.

Because the government has not presented evidence that Mr. Peppel hid "assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts" or otherwise used "especially complex or especially intricate offense conduct," U.S.S.G. §2B1.1(b)(8), Application Note 6(B), the government has failed to satisfy its burden of proof that the "sophisticated means" enhancement applies.

CONCLUSION

Because the government has failed to demonstrate that there was any loss here occasioned by the offense, that as a consequence there were no victims from the offense, and that there was no use of sophisticated means as that term is used in Sentencing Guideline § 2B1.1(b)(8). The sentencing enhancements that the government seeks should be disallowed.

Respectfully submitted,

/s/ *Ralph W. Kohnen*
Ralph W. Kohnen (0034418)
Jeanne M. Cors (0070660)
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202-3957
(513) 381-2838
(513) 381-0205 (facsimile)
kohnen@taftlaw.com
cors@taftlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Motion for Extension was served electronically upon counsel of record via the Court's CM/ECF system, this _____ day of July, 2011.

/s/ *Ralph W. Kohnen*
Ralph W. Kohnen

Stock Ownership

January 15, 2003 thru February 14, 2003

	Client Account	State/Country	Issue Date	Cancel Date
1	Allen [redacted]	CA	08/02/2001	None
2	Arnold, [redacted]	CA	12/04/1999	None
3	Atkins, [redacted]	GA	03/15/1999	None
4	Axer, [redacted]	OH	09/14/2000	01/08/2004
5	Bachelor, [redacted]	OH	04/15/1998	02/18/2004
6	Bailey, [redacted]	OH	07/19/2000	None
7	Baker, [redacted]	OH	07/30/1997	None
8	Barrett, [redacted]	OH	04/08/1999	None
9	Barry, [redacted]	England	06/28/2002	None
10	Batley, [redacted]	AL	10/15/2002	None
11	Bauman, [redacted]	OH	07/30/2001	None
12	Bear Stearns Securities Corp	NY	10/02/1998	None
13	Beepha, [redacted]	OH	07/19/2000	None
14	Bellar, [redacted]	OH	11/08/2000	None
15	Berry, [redacted]	OH	07/19/2000	None
16	Blankenship, [redacted]	OH	05/12/1997	None
17	Blankenship, [redacted]	OH	05/12/1997	None
18	Bochenek, [redacted]	IL	05/19/1999	None
19	Bochenek, [redacted]	IL	05/19/1999	None
20	Bradley, [redacted]	VA	08/19/2002	None
21	Breg, [redacted]	GA	02/14/2001	None
22	Briddell, [redacted]	OH	01/08/1998	None
23	Brown, [redacted]	OH	07/19/2000	None
24	Busch, [redacted]	OH	07/05/2001	None
25	Caldwell, [redacted]	NC	03/20/2001	None
26	Canada Inc	Canada	02/16/2000	None
27	Carpenter, [redacted]	OH	07/19/2000	None
28	Cartlidge, [redacted]	SC	03/15/1999	None
29	Chad, [redacted]	MO	01/16/2003	None
30	Clark, [redacted]	WA	06/15/1998	04/14/2003
31	Cloud, [redacted]	OH	11/21/1996	None
32	Cloud, [redacted]	OH	11/21/1996	None
33	Cloud, [redacted]	OH	11/21/1996	None
34	Cole, [redacted]	OH	07/19/2000	None
35	Corcoran, [redacted]	MN	04/05/2000	None
36	Crosby, [redacted]	NV	12/06/2001	None
37	Crosby, [redacted]	NV	12/06/2001	None
38	Culp, [redacted]	OH	05/16/2000	None
39	Culp, [redacted]	OH	05/16/2000	None
40	Curtis, [redacted]	TN	03/15/1999	None
41	Curts, [redacted]	CA	08/16/2002	None
42	Dasco, [redacted]	MA	11/29/2000	None
43	Day, [redacted]	OH	12/09/1999	None
44	Dean Witter Reynolds Inc	NY	04/20/1998	03/26/2003
45	Del Rosario, [redacted]	GA	09/21/2000	None

42 shareholders with certificate issue dates, from exhibit 39(b), after 2/26/2002 – highlighted in yellow.

Stock Ownership

January 15, 2003 thru February 14, 2003

	Client Account	State/Country	Issue Date	Cancel Date
46	Dempsey, [redacted]	Canada	09/28/2000	None
47	Dexter, [redacted]	GA	03/15/1999	None
48	Dhadphale, [redacted]	CA	12/13/2001	None
49	Dickey, [redacted]	OH	10/23/2000	None
50	Dickey, [redacted]	OH	10/23/2000	None
51	Diener, [redacted]	OH	06/14/1999	None
52	Donoho, [redacted]	OH	07/19/2000	None
53	Dotson, [redacted]	CA	12/04/1998	None
54	Dreyer, [redacted]	OH	02/04/1999	08/26/2004
55	Edwards, [redacted]	GA	10/16/2000	None
56	Engelsman, [redacted]	CT	08/05/1998	None
57	Engelsman, [redacted]	CT	08/05/1998	None
58	Faulconer, [redacted]	OH	03/06/2001	None
59	Feaver, [redacted]	CA	12/13/2001	None
60	Fenberg, [redacted]	OH	12/11/1997	None
61	Fenberg, [redacted]	OH	12/11/1997	None
62	Fernandes, [redacted]	England	06/28/2002	None
63	Fitzgerald, [redacted]	OH	07/19/2000	None
64	Fitzgerald, [redacted]	OH	07/19/2000	None
65	Foliano, [redacted]	OH	08/13/1998	None
66	Foliano, [redacted]	OH	08/13/1998	None
67	Fort Pitt Fund III	PA	09/04/1998	None
68	Fulop, [redacted]	OH	07/29/2000	None
69	Garcia, [redacted]	OH	07/29/2000	None
70	Giles, [redacted]	OH	11/20/1996	12/15/2004
71	Giles, [redacted]	OH	11/20/1996	12/15/2004
72	Gordon, [redacted]	OH	04/27/2000	None
73	Gorsuch, [redacted]	OH	07/19/2000	None
74	Graf, [redacted]	WI	01/07/2000	None
75	Graslie, [redacted]	CA	11/27/2001	None
76	Guerra, [redacted]	CA	12/04/1998	None
77	Guzik, [redacted]	IL	02/12/2003	None
78	Hanson, [redacted]	OH	07/19/2000	None
79	Hart, [redacted]	WA	04/18/2002	09/30/2004
80	Hart, [redacted]	OH	08/06/1998	None
81	Hart, [redacted]	OH	08/06/1998	None
82	Heide, [redacted]	OH	07/19/2000	None
83	Hemmelgano, [redacted]	OH	03/15/1999	None
84	Henry, [redacted]	OH	01/03/2001	12/05/2003
85	Henry, [redacted]	OH	01/03/2001	12/05/2003
86	Herlitz, [redacted]	CA	04/01/2002	None
87	Herrick, [redacted]	DC	09/30/1997	None
88	Higdon, [redacted]	OH	07/19/2000	None
89	Hill, [redacted]	OH	12/11/1996	None
90	Hill, [redacted]	OH	12/11/1996	None

Stock Ownership

January 15, 2003 thru February 14, 2003

	Client Account	State/Country	Issue Date	Cancel Date
91	Holmerg, [redacted]	OH	07/29/2000	None
2	Holt, [redacted]	NY	03/12/1997	07/09/2003
93	Holt, [redacted]	GA	11/19/1996	None
94	Huffman, [redacted]	OH	11/15/1996	None
95	Huggins, [redacted]	OH	07/19/2000	None
96	Humac Company	TX	04/13/1999	None
97	Hunt, [redacted]	WA	03/24/1999	None
98	Jackson, [redacted]	OH	01/20/2000	None
99	Jaffoni & Collins Inc.	NY	05/17/2000	None
100	Janney, [redacted]	MD	02/04/1999	None
101	Janney, [redacted]	MD	02/04/1999	None
102	Jeffries, [redacted]	NC	04/28/2000	None
103	JJB Hilliard WL Lyons Inc	KY	11/07/2001	03/30/2004
104	Joseph, [redacted]	OH	07/19/2000	None
105	Kappel, [redacted]	IL	02/07/2003	None
106	Kavannagh, [redacted]	NJ	10/05/2001	None
107	Keller, [redacted]	OH	07/21/2000	None
108	Keller, [redacted]	OH	07/21/2000	None
109	Kelly, [redacted]	OH	03/07/2001	None
110	Kelly, [redacted]	OH	03/07/2001	None
111	Kelly, [redacted]	IL	10/14/1998	None
112	Kenney, [redacted]	OH	08/20/1997	None
113	Kenney, [redacted]	OH	08/20/1997	None
114	Kennis, [redacted]	OH	07/19/2000	None
115	Kilmarx, [redacted]	TN	03/05/2002	None
116	Koloski, [redacted]	OH	03/16/1999	None
117	Kopacz, [redacted]	IL	08/21/1998	None
118	Kopacz, [redacted]	IL	08/21/1998	None
119	Kraft, [redacted]	OH	11/29/1999	None
120	Kraft, [redacted]	OH	11/29/1999	None
121	Kraft, [redacted]	OH	11/29/1999	None
122	Kronauge, [redacted]	OH	08/06/1997	None
123	Kronauge, [redacted]	OH	08/06/1997	None
124	Kronenberger, [redacted]	OH	09/10/2002	None
125	Krug, [redacted]	OH	08/20/2002	None
126	Lambiase, [redacted]	OH	07/29/2000	None
127	Lambright, [redacted]	OH	10/13/2000	None
128	Larkin, [redacted]	GA	06/15/2001	None
129	Laucria, [redacted]	OH	09/07/2000	None
130	Lavoie, [redacted]	CT	11/29/2000	None
131	Lees, [redacted]	England	06/28/2002	None
132	Lemming, [redacted]	OH	03/06/1998	None
133	Lentz, [redacted]	TN	09/11/1998	None
134	Lerette, [redacted]	NC	10/16/2000	None
135	Liberati, [redacted]	PA	09/30/1997	12/10/2003

Stock Ownership

January 15, 2003 thru February 14, 2003

	Client Account	State/Country	Issue Date	Cancel Date
136	Logel, [redacted]	OH	08/02/2000	None
137	Lois, [redacted]	OH	07/19/2000	None
138	Long, [redacted]	MD	12/17/1998	None
139	Loya, [redacted]	CA	12/04/1998	None
140	Lucas, [redacted]	OH	02/03/2003	None
141	Luquis, [redacted]	OH	07/19/2000	None
142	Lynch, [redacted]	MO	02/05/2003	None
143	Mack, [redacted]	PA	10/28/1998	None
144	Mallory, [redacted]	OH	07/19/2000	None
145	Martin, [redacted]	MO	09/24/2002	None
146	Maseth, [redacted]	OH	07/19/2000	None
147	Matre, [redacted]	OH	11/10/1997	None
148	Matthews [redacted]	GA	08/16/1999	None
149	Matthews, [redacted]	OH	10/05/2000	None
150	McCain, [redacted]	OH	07/29/2000	None
151	McCoy, [redacted]	Ga	12/21/2000	None
152	McGrath, [redacted]	IL	08/14/2001	None
153	McGraw, [redacted]	CA	01/06/2000	02/10/2003
154	McMorrine, [redacted]	OH	12/09/1999	None
155	McMorrine, [redacted]	OH	12/09/1999	None
156	Melms, [redacted]	IL	01/07/2000	None
157	Merkle, [redacted]	OH	03/12/2002	None
158	Middleton, [redacted]	GA	11/06/2000	None
159	Miller, [redacted]	OH	10/02/2001	None
160	Miller, [redacted]	OH	07/10/2001	None
161	Minton, [redacted]	OH	08/25/1998	None
162	Minton, [redacted]	OH	08/25/1998	None
163	Morgan Keegan & Co. Inc	TN	11/09/2001	None
164	Munson, [redacted]	OH	07/19/2000	None
165	Murphy, [redacted]	CA	10/13/2000	None
166	Murphy, [redacted]	CA	10/13/2000	None
167	Muth, [redacted]	OH	03/21/2001	None
168	Newhouse, [redacted]	OH	01/29/1999	None
169	Nussbaum, [redacted]	Canada	12/01/1998	None
170	O'Brien, [redacted]	AL	10/14/1999	None
171	O'Brien, [redacted]	AL	12/09/1999	None
172	O'Neil, [redacted]	MI	11/13/2000	None
173	Osowski, [redacted]	OK	10/01/2002	None
174	Ostmo, [redacted]	OK	02/12/2003	None
175	Paradine, [redacted]	OH	07/19/2000	None
176	Park, [redacted]	GA	08/16/2000	None
177	Parrish, [redacted]	OH	07/19/2000	None
178	Parrish, [redacted]	OH	07/19/2000	None
179	Peck, [redacted]	OH	10/31/1997	None
180	Peck, [redacted]	OH	02/07/2003	None

Stock Ownership

January 15, 2003 thru February 14, 2003

	Client Account	State/Country	Issue Date	Cancel Date
181	Peil, [redacted]	WI	01/07/2000	None
182	Peil, [redacted]	WI	01/07/2000	None
183	Pellegrino, [redacted]	OH	07/19/2000	None
184	Pena, [redacted]	CA	08/16/2000	None
185	Pequignot, [redacted]	OH	11/16/1998	None
186	Perry, [redacted]	TN	07/24/2002	None
187	Piotrowski, [redacted]	OH	12/24/1997	None
188	Porter, [redacted]	OH	07/19/2000	None
189	Porter, [redacted]	OH	07/19/2000	None
190	Post, [redacted]	CO	03/24/1999	None
191	Powers, [redacted]	IL	06/14/1999	None
192	Radcliffe, [redacted]	PA	03/24/1998	None
193	Radcliffe, [redacted]	PA	09/30/1997	None
194	Radcliffe, [redacted]	PA	01/12/1999	None
195	Radcliffe, [redacted]	PA	01/12/1998	None
196	Rautzen, [redacted]	OH	12/04/1997	None
197	Reg & Tran Co for Holders of Zengine	NJ	11/21/2001	None
198	Richards, [redacted]	OH	03/02/1998	01/03/2005
199	Richards, [redacted]	OH	03/02/1998	01/03/2005
200	Richardson, [redacted]	WA	06/15/1998	None
201	Riddle, [redacted]	GA	09/11/2000	None
202	Ridenour, [redacted]	OH	07/19/2000	None
203	Ritter, [redacted]	TN	07/21/1999	None
204	Rizzo, [redacted]	OH	07/19/2000	None
205	Roberts, [redacted]	IL	07/06/2000	None
206	Roberts, [redacted]	IL	07/06/2000	None
207	Rollison [redacted]	GA	02/15/2001	None
208	Rosa, [redacted]	OH	07/19/2000	None
209	Ruchman, [redacted]	IL	03/05/1998	None
210	Ruecker, [redacted]	WI	01/07/2000	None
211	Rypstra, [redacted]	CA	12/04/1998	None
212	Savarino, [redacted]	CA	12/13/2001	None
213	Scates, [redacted]	OH	07/19/2000	None
214	Schierling, [redacted]	OH	11/25/1996	None
215	Schierling, [redacted]	OH	11/25/1996	None
216	Schnibbe, [redacted]	OH	07/19/2000	None
217	Schoen, [redacted]	OH	03/06/1998	None
218	Schwartz, [redacted]	OH	11/15/1996	None
219	Schwarz, [redacted]	OH	04/04/2000	None
220	Scott, [redacted]	OH	03/18/1997	None
221	Scott, [redacted]	FL	05/18/2000	None
222	Scruggs, [redacted]	OK	10/01/2002	None
223	Scurti, [redacted]	CO	06/27/2000	None
224	Seales, [redacted]	OH	07/19/2000	None
225	Serena, [redacted]	OH	08/12/1998	None

Stock Ownership

January 15, 2003 thru February 14, 2003

	Client Account	State/Country	Issue Date	Cancel Date
226	Serena, [redacted]	OH	08/12/1998	None
7	Sillery, [redacted]	OH	03/27/1998	12/27/2004
228	Sillery, [redacted]	OH	03/27/1998	12/27/2004
229	Simmons, [redacted]	GA	07/02/2001	None
230	Singleton, [redacted]	GA	03/16/1999	None
231	Smith, [redacted]	England	06/28/2002	None
232	Smith, [redacted]	CT	11/29/2000	None
233	Smith, [redacted]	TN	03/15/1999	None
234	Smith, [redacted]	CT	11/29/2000	None
235	Snyder, [redacted]	GA	03/23/2001	None
236	Soukenik, [redacted]	VA	09/30/1997	None
237	Spadafora, [redacted]	PA	09/03/1998	None
238	Spartz, [redacted]	WI	01/07/2000	None
239	Spray, [redacted]	OH	07/19/2000	None
240	Sprenger, [redacted]	NC	11/27/2002	None
241	Sprenger, [redacted]	NC	11/27/2002	None
242	Stefanski, [redacted]	IL	01/07/2000	None
243	Steiden, [redacted]	KY	02/04/2002	None
244	Steiden, [redacted]	KY	02/04/2002	None
245	Stevenson, [redacted]	OH	11/21/2000	None
246	Sullivan Jr., [redacted]	OH	08/18/1999	None
247	Taylor, [redacted]	TX	07/06/1999	None
248	Tedder, [redacted]	OH	07/19/2000	None
249	Teeters, [redacted]	AL	03/24/1999	None
250	Tenzel, [redacted]	TN	10/18/1999	None
251	Thomas-McClure, [redacted]	CA	11/23/2001	None
252	Thompson, [redacted]	GA	06/20/2000	None
253	Tracy, [redacted]	MO	10/09/2002	None
254	Tregea, [redacted]	CA	02/12/2002	None
255	Trott, [redacted]	WA	03/16/1999	None
256	Turner, [redacted]	OH	07/19/2000	None
257	Turvy, [redacted]	OH	07/05/2000	None
258	UpChurch, [redacted]	TN	08/16/2000	None
259	Vail, [redacted]	OH	04/29/1998	None
260	Velazquez, [redacted]	OH	07/19/2000	None
261	Vergauwen, [redacted]	IL	01/07/2000	None
262	Walker, [redacted]	OH	06/30/1997	None
263	Warrick, [redacted]	OH	01/27/1997	None
264	Werner, [redacted]	NY	12/06/2001	None
265	Westminster Invest. LTD Partnership	PA	09/30/1997	None
266	Wheater, [redacted]	NY	03/15/1999	None
267	White, [redacted]	England	06/28/2002	None
8	White, [redacted]	United Arab Emirates	06/28/2002	01/23/2003
269	Whitfield, [redacted]	CO	11/19/2002	None
270	Whittaker, [redacted]	CA	11/20/2002	None

Stock Ownership

January 15, 2003 thru February 14, 2003

	Client Account	State/Country	Issue Date	Cancel Date
271	Wilhelm, [redacted]	OH	10/01/2001	None
272	Wilkes, [redacted]	CA	11/23/2001	None
273	Williams, [redacted]	OH	11/25/1996	None
274	Wilson, [redacted]	IN	06/22/2000	01/03/2005
275	Wilson, [redacted]	IN	06/22/2000	01/03/2005
276	Wilson, [redacted]	OH	11/17/1997	None
277	Winstel, [redacted]	WV	03/05/2002	None
278	Wolf, [redacted]	NY	11/23/2001	None
279	Woodard, [redacted]	OH	12/15/2000	None
280	Yetsko, [redacted]	OH	03/15/1999	None
281	Yoches, [redacted]	CA	11/23/2001	None
282	Yuhas, [redacted]	OH	11/22/1996	None
283	Yuhas, [redacted]	OH	11/22/1996	None
284	Zimmer, [redacted]	OH	10/20/1998	None

9 appear to be business entities

MCSi shareholders who purchased stock after February 26, 2002 and prior to MCSi bankruptcy, June 3, 2003; information from Government exhibits 39(b) and 39c.

Exh. 39c shareholder number	Exh. 39(b) page	Last name	City	State	Number of shares	Issue Date	Cancel Date
9	4	Barry	West Yorkshire	England	13,401	6/28/02	
9	4	Barry	West Yorkshire	England	13,401	8/15/02	
10	4	Batley	Spanish Fort	AL	22	10/15/02	
20	7	Bradley	Roanoke	VA	73	8/19/02	
29	33	Chad	Eagle Rock	MO	93	1/16/03	
41	37	Curtis	Carmichael	CA	449	6/16/02	
42	37	Dasco	Monson	MA	**161**	3/21/02	
62	42	Fernandes	West Yorkshire	England	6,701	6/28/02	
62	42	Fernandes	West Yorkshire	England	6,701	6/28/02	
77	46	Guzik	Rolling Meadows	IL	75	2/12/03	
79	47	Hart	Everett	WA	30	4/18/02	9/30/04
86	48	Herhtz	Albany	CA	668	4/1/02	
105	53	Kappel	Plainsfield	IL	395	2/7/03	
115	55	Kilmarx	Madison	TN	137	3/5/02	
124	58	Kronberger	Dayton	OH	134	9/10/02	
125	58	Krug	Dayton	**OH**	100	8/20/02	
130	60	Lavoie	Kensington	CT	7,500	5/13/02	
131	60	Lees	West Yorkshire	England	3,046	6/28/02	
131	60	Lees	West Yorkshire	England	3,046	6/28/02	
140	62	Lucas Trust	Dayton	OH	1,500	2/3/03	
142	63	Lynch	Branson	MO	71	2/5/03	
145	64	Martin	Branson	MO	549	9/24/02	
145	64	Martin	Branson	MO	75	2/3/03	
157	69	hledde	Dayton	OH	475	3/12/02	
163	71	Morgan Keegan & Co. Inc	Memphis	TN	1,920	6/12/02	
173	75	Osowski	Chelsea	OK	35	10/1/02	
174	75	Ostmo	Tulsa	OK	159	2/12/03	
180	78	Peck	Cincinnati	OH	1,207	2/7/03	3/5/03
184	79	Pena	Livermore	CA	200	8/16/02	
186	80	Perry	Memphis	TN	284	7/24/02	
197	84	Reg & Tran/Holders of Zengine	Cranford	NJ	593	4/5/02	
222	91	Scruggs	Chelsea	OK	35	10/1/02	
231	94	Smith	North Yorkshire	England	3,046	6/28/02	
231	94	Smith	North Yorkshire	England	3,046	6/28/02	
232	94	Smith	Coventry	CT	1,688	5/13/02	
233	94	Smith	Antioch	TN	422	10/20/02	
234	94	Smith	Coventry	CT	1,722	5/13/02	
240, 241	97	Sprenger	Charlotte	NC	2	11/27/02	
253	100	Tracy	Eagle Rock	MO	54	10/9/02	
267	105	White	North Yorkshire	England	83,451	6/28/02	
267	105	White	North Yorkshire	England	83,451	6/28/02	
268	105	White	Abu Dhabi	UAE	10,355	6/28/02	1/23/03
268	105	White	Abu Dhabi	UAE	10,355	6/28/02	1/23/03
269	105	Whitfield	Denver	CO	764	11/19/02	
270	106	Whittaker	Danville	CA	152	11/20/02	
272	107	Wilkes	San Francisco	CA	1,113	5/2/02	
277	108	VVi nstel	Wheeling	WV	428	3/5/02	
281	109	Yoches	Costa Mesa	CA	286	11/7/02	
42 separate shareholders					263,571 shares		

MCSi shareholders who purchased stock before February 26, 2002 and held their stock January 15, 2003 thru February 14, 2003; Information from Government exhibits 39b and 39c

Exh. 39c shareholder number	Exh. 39(b) page	Last name	City	State	Certificate Number	Number of Shares	Issue Date	Cancel Date
1	1	Allen	Long Beach	CA	7171	73	8/2/2001	
2	2	Arnold	Mountain View	CA	5102	100	12/4/1998	
2	2	Arnold	Mountain View	CA	5150	300	1/29/1999	
3	2	Atkins	Duluth	GA	5179	5	3/15/1999	
4	2	Axer Trust	Beavercreek	OH	7033	300	9/14/2000	1/8/2004
5	3	Bachelor	Dayton	OH	249	50	4/29/1998	2/18/2004
5	3	Bachelor	Dayton	OH	241	100	4/15/1998	2/18/2004
6	3	Bailey	Dayton	OH	5502	75	7/19/2000	
7	3	Baker	Kettering	OH	306	50	4/24/1998	
7	3	Baker	Kettering	OH	70	100	7/30/1997	
8	3	Barrett	Dayton	OH	5212	100	4/8/1999	
11	4	Bauman	Dayton	OH	7148	100	5/9/2001	
12	5	Bear Sterns	Brooklyn	NY	5216	67,052	5/7/1999	
13	5	Beephan	Dayton	OH	5504	25	7/19/2000	
14	5	Bellar	Dayton	OH	7071	100	11/8/2000	
15	6	Berry	Dayton	OH	5505	25	7/19/2000	
16, 17	6	Blankenship	West Carrollton	OH	308	50	4/24/1998	
16, 17	6	Blankenship	West Carrollton	OH	51	100	5/12/1997	
18, 19	6	Bochenek	Park Ridge	IL	5217	100	5/19/1999	
21	7	Breg	Hoschton	GA	7118	492	2/14/2001	
22	7	Briddell	New Carlisle	OH	310	15	4/24/1998	
22	7	Briddell	New Carlisle	OH	151	30	1/8/1998	
23	8	Brown	Dayton	OH	5507	25	7/19/2000	
24	8	Busch	North Olmstead	OH	7162	51	7/5/2001	
25	8	Caldwell	Durham	NC	7134	3	3/20/2001	
26	9	3702642 Canada Inc.	St. Laurent	Quebec	7231	451	11/26/2001	
27	9	Carpenter	Dayton	OH	5508	25	7/19/2000	
28	9	Cartlidge	Anderson	SC	5185	27	3/15/1999	
30	34	Clark	Maple Valley	WA	5424	14,363	4/5/2000	
30	34	Clark	Maple Valley	WA	282	66,068	6/15/1998	4/14/2003
31, 32	34	Cloud	Dayton	OH	24	20	11/21/1996	
31, 32	34	Cloud	Dayton	OH	311	10	4/24/1998	
31, 33	35	Cloud	Dayton	OH	23	20	11/21/1996	
31, 33	35	Cloud	Dayton	OH	312	10	11/21/1996	
34	35	Cole	Dayton	OH	5509	75	7/19/2000	
35	35	Corcoran	Stillwater	MN	5422	30	4/5/2000	
36, 37	35	Crosby Trust	Las Vegas	NV	7246	45	12/6/2001	
38	36	Culp	Dayton	OH	5462	1,898	5/16/2000	
39	36	Culp	Dayton	OH	7111	3,178	1/31/2001	
40	36	Curtis	Memphis	TN	5176	1	3/15/1999	
43	37	Day	Centerville	OH	5318	10	12/9/1999	
44	106	Dean Witter Reynolds Inc.	New York	NY	5265	10,000	9/22/1999	3/16/2004
44	106	Dean Witter Reynolds Inc.	New York	NY	5266	10,000	9/22/1999	3/16/2004
44	106	Dean Witter Reynolds Inc.	New York	NY	5267	10,000	9/22/1999	3/16/2004
44	106	Dean Witter Reynolds Inc.	New York	NY	5268	10,000	9/22/1999	3/16/2004

44	106	Dean Witter Reynolds Inc.	New York	NY	5269	10,000	9/22/1999	3/16/2004
44	106	Dean Witter Reynolds Inc.	New York	NY	5270	10,000	9/22/1999	3/16/2004
44	106	Dean Witter Reynolds Inc.	New York	NY	5271	10,000	9/22/1999	3/16/2004
44	106	Dean Witter Reynolds Inc.	New York	NY	5272	897	9/22/1999	3/16/2004
44	106	Dean Witter Reynolds Inc.	New York	NY	5273	1,000	9/22/1999	3/16/2004
44	106	Dean Witter Reynolds Inc.	New York	NY	5274	1,000	9/22/1999	3/16/2004
45	37	Del Rosario	Morrow	GA	7040	5	9/21/2000	
46	38	Dempsey	Brooklin	Ontario	7013	41	8/29/2000	
47	38	Dexter	Ball Ground	GA	5181	6	3/15/1999	
48	38	Dhadphale	San Leandro	CA	7267	77,735	12/18/2001	
49, 50	38	Dickey	London	OH	7059	35	10/23/2000	
51	39	Diener	Dayton	OH	5238	8	6/14/1999	
52	39	Donoho	Dayton	OH	5511	25	7/19/2000	
53	39	Dotson	Livermore	CA	5105	150	12/4/1998	
54	40	Dreyer	Kettering	OH	5157	50	2/4/1999	8/26/2004
55	41	Edwards	Douglasville	GA	7057	8	10/16/2000	
56, 57	41	Engelsman	Xenia	OH	5019	100	8/5/1998	
58	41	Faulconor Trust	Kettering	OH	7126	500	3/6/2001	
59	42	Feaver	San Francisco	CA	7263	77,736	12/18/2001	
60, 61	42	Fenberg	Dayton	OH	318	50	4/24/1998	
60, 61	42	Fenberg	Dayton	OH	7214	1	11/23/2001	
60, 61	42	Fenberg	Dayton	OH	129	100	12/11/1997	
63	43	Fitzgerald	Dayton	OH	5515	25	7/19/2000	
64	43	Fitzgerald	Dayton	OH	7027	25	9/7/2000	
64	43	Fitzgerald	Dayton	OH	5514	75	7/19/2000	
65, 66	43	Foliano	Fairborn	OH	5132	100	1/19/1999	
65, 66	43	Foliano	Fairborn	OH	5031	100	8/13/1998	
67	43	Pitt Fund III	Uniontown	PA	5043	3,000	9/4/1998	
67	43	Pitt Fund III	Uniontown	PA	5044	5,000	9/4/1998	
67	43	Pitt Fund III	Uniontown	PA	5045	42,000	9/4/1998	
68	44	Fulop	Dayton	OH	5516	50	7/19/2000	
69	44	Garcia	Dayton	OH	5517	25	7/19/2000	
70, 71	44	Giles	West Carrollton	OH	322	100	4/24/1998	12/15/2004
70, 71	44	Giles	West Carrollton	OH	21	200	11/20/1996	12/15/2004
72	45	Gordon	Englewood	OH	5452	1,000	4/27/2000	
73	45	Gorsuch	Dayton	OH	5518	25	7/19/2000	
74	45	Graf	North Prairie	WI	5350	431	1/7/2000	
75	45	Graslie	San Jose	CA	7239	17	11/27/2001	
75	45	Graslie	San Jose	CA	7240	75	11/27/2001	
76	46	Guerra	Redwood City	CA	5148	750	1/29/1999	
76	46	Guerra	Redwood City	CA	5149	1,500	1/29/1999	
76	46	Guerra	Redwood City	CA	5106	750	12/4/1998	
78	47	Hanson	Dayton	OH	7026	25	9/7/2000	
78	47	Hanson	Dayton	OH	5519	75	7/19/2000	
80, 81	47	Hart Trust	Dayton	OH	5404	40	3/21/2000	
82	47	Heide	Dayton	OH	5520	25	7/19/2000	
83	48	Hemmelgano	Dayton	OH	5178	3	3/15/1999	
84, 85	48	Henry	Centerville	OH	7104	500	1/3/2001	12/5/2003
87	48	Herrick	Washington	DC	223	4,628	3/25/1998	
87	48	Herrick	Washington	DC	328	6,949	4/24/1998	
87	48	Herrick	Washington	DC	92	9,270	9/30/1997	
88	49	Higdon	Dayton	OH	5521	50	7/19/2000	

89, 90	49	Hill	Huber Heights	OH	7241	1	11/28/2001	
91	49	Holmberg	Dayton	OH	5522	25	7/19/2000	
92	49	Holt	Freeport	NY	46	100	3/12/1997	7/9/2003
92	49	Holt	Freeport	NY	334	50	4/24/1998	7/9/2003
93	50	Holt	Lenox	GA	19	40	11/19/1996	
93	50	Holt	Lenox	GA	122	10	11/10/1997	
93	50	Holt	Lenox	GA	335	25	4/24/1998	
94	50	Huffman	Dayton	OH	60	15,000	7/8/1997	
94	50	Huffman	Dayton	OH	61	5,000	7/8/1997	
94	50	Huffman	Dayton	OH	337	10,000	4/24/1998	
95	50	Huggins	Dayton	OH	5523	25	7/19/2000	
96	51	Humac Company	Dallas	TX	276	5	5/21/1998	
96	51	Humac Company	Dallas	TX	239	10	4/13/1998	
97	51	Hunt	Seattle	WA	5201	12	3/24/1999	
98	51	Jackson	Kettering	OH	5369	2	1/20/2000	
99	52	Jaffoni & Collins Inc.	New York	NY	5460	1	5/17/2000	
100, 101	52	Janney	Germantown	MD	5160	20	2/4/1999	
102	52	Jeffries	Moncure	NC	5455	5	4/28/2000	
104	53	Joseph	Dayton	OH	5524	25	7/19/2000	
106	54	Kavanagh	Bayville	NJ	7044	15	10/5/2000	
107, 108	54	Keller	Beavercreek	OH	7002	100	7/21/2000	
109, 110	54	Kelly	Beavercreek	OH	7127	100	3/7/2001	
111	54	Kelly	Paols Heights	IL	5074	1,071	10/14/1998	
112, 113	55	Kenney	Centerville	OH	339	200	4/24/1998	
112, 113	55	Kenney	Centerville	OH	213	180	3/16/1998	
112, 113	55	Kenney	Centerville	OH	79	400	8/20/1997	
114	55	Kennis	Dayton	OH	5525	25	7/19/2000	
116	56	Koloski	Dayton	OH	5191	8	3/16/1999	
117, 118	56	Kopacz	Elgin	IL	5035	25	8/21/1998	
119	56	Kraft	Dayton	OH	7079	17	11/27/2000	
119	56	Kraft	Dayton	OH	5302	23	11/29/1999	
120	56	Kraft	Dayton	OH	7078	17	11/27/2000	
120	57	Kraft	Dayton	OH	5301	10	11/29/1999	
121	57	Kraft	Dayton	OH	5303	30	11/29/1999	
122, 123	58	Kronauge	Dayton	OH	5497	150	7/10/2000	
122, 123	58	Kronauge	Dayton	OH	7258	1	12/14/2001	
126	59	Lambiase	Dayton	OH	5526	25	7/19/2000	
127	59	Lambright	Centerville	OH	7055	20	10/13/2000	
128	59	Larkin	Clarkston	GA	7158	13	6/15/2001	
129	59	Laucrica	Dayton	OH	7028	25	9/7/2000	
132	60	Lemming	Dayton	OH	346	50	4/24/1998	
132	60	Lemming	Dayton	OH	202	100	3/6/1998	
133	61	Lentz	Nashville	TN	7115	521	1/31/2001	
134	61	Lerette	Durham	NC	7056	3	10/16/2000	
135	61	Liberati	Sewickley	PA	5479	50,000	6/21/2000	12/10/2003
135	61	Liberati	Sewickley	PA	5482	27,368	6/21/2000	12/10/2003
135	61	Liberati	Sewickley	PA	5553	29,133	7/26/2000	12/10/2003
135	61	Liberati	Sewickley	PA	5554	25,000	7/26/2000	12/10/2003
135	61	Liberati	Sewickley	PA	5555	25,000	7/26/2000	12/10/2003
136	61	Logel	Dayton	OH	7067	75	11/2/2000	
137	62	Lois	Dayton	OH	5527	25	7/19/2000	
139	62	Loya	Redwood City	CA	5107	50	12/4/1998	

141	63	Luquis	Dayton	OH	5528	25	7/19/2000	
143	63	Mack Profit-Sharing Plan	Pittsburgh	PA	5087	1,000	10/28/1998	
144	63	Mallory	Dayton	OH	5529	100	7/19/2000	
146	64	Maseth	Dayton	OH	5530	50	7/19/2000	
147	64	Matre Trust	Kettering	OH	349	50	4/24/1998	
147	64	Matre Trust	Kettering	OH	123	100	11/10/1997	
148	65	Matthews	Duluth	GA	7102	31,883	12/28/2000	
148	65	Matthews	Duluth	GA	7121	26,450	2/15/2001	
149	66	Matthews	Dayton	OH	7046	1,000	10/5/2000	
150	66	McCain	Dayton	OH	5531	25	7/19/2000	
151	67	McCoy	Lawrenceville	GA	7095	1	12/21/2000	
152	67	McGrath	Crystal Lake	IL	7178	22	8/14/2001	
153	67	McGraw	Alameda	CA	5344	600	1/6/2000	2/10/2003
153	67	McGraw	Alameda	CA	7230	4	11/26/2001	2/10/2003
154, 155	68	McMorrine	Jamestown	OH	5319	45	12/9/1999	
156	68	Melms	Arlington Heights	IL	5349	513	1/7/2000	
158	69	Middleton	Atlanta	GA	7070	21	11/6/2000	
159	69	Miller	Sandusky	OH	7192	57	10/2/2001	
160	69	Miller	Dayton	OH	7163	150	7/10/2001	
161, 162	70	Minton	Xenia	OH	5038	300	8/25/1998	
164	72	Munson	Dayton	OH	5532	25	7/19/2000	
165, 166	72	Murphy	Sacramento	CA	7054	515	10/13/2000	
167	73	Muth	Dayton	OH	7136	450	3/21/2001	
168	73	Newhouse	Dayton	OH	5151	200	1/29/1999	
169	74	Nussbaum	Saint-Laurent	Quebec	5100	1	12/1/1998	
170	74	O'Brien	Huntsville	AL	5280	9	10/14/1999	
171	74	O'Brien	Huntsville	AL	5320	8	12/9/1999	
172	74	O'Neil	Clarklake	MI	7074	100	11/13/2000	
175	75	Paradine	Dayton	OH	5533	25	7/19/2000	
176	76	Park	Oxford	GA	7009	4	8/16/2000	
177	76	Parrish	Dayton	OH	5535	75	7/19/2000	
177	76	Parrish	Dayton	OH	7025	25	9/7/2000	
178	76	Parrish	Dayton	OH	5536	75	7/19/2000	
179	77	Peck	Cincinnati	OH	120	5,000	10/31/1997	
181	78	Peil	Brookfield	WI	5347	1,240	1/7/2000	
182	78	Peil	Waukesha	WI	5353	172	1/7/2000	
183	78	Pellegrino	Dayton	OH	5537	25	7/19/2000	
185	80	Pequignot	Columbus	OH	5092	64	11/16/1998	
187	80	Piotrowski	Riverside	OH	361	100	4/24/1998	
187	80	Piotrowski	Riverside	OH	131	200	12/24/1997	
188	81	Porter	Dayton	OH	5538	100	7/19/2000	
188	81	Porter	Dayton	OH	7022	25	9/7/2000	
189	81	Porter	Dayton	OH	5539	25	7/19/2000	
190	81	Post	Denver	CO	5205	88	3/24/1999	
191	81	Powers	Glenview	IL	5237	200	6/14/1999	
192, 193	82	Radcliffe	Uniontown	PA	219	50,920	3/25/1998	
192, 193	82	Radcliffe	Uniontown	PA	5442	10,000	4/17/2000	
192, 193	82	Radcliffe	Uniontown	PA	5442	10,000	4/17/2000	
192, 193	82	Radcliffe	Uniontown	PA	5444	10,000	4/17/2000	
192, 193	82	Radcliffe	Uniontown	PA	5445	10,000	4/17/2000	
192, 193	82	Radcliffe	Uniontown	PA	5446	10,000	4/17/2000	
192, 193	82	Radcliffe	Uniontown	PA	5449	1,133	4/17/2000	

192, 193	82	Radcliffe	Uniontown	PA	7187	5,000	9/25/2001	
192, 193	82	Radcliffe	Uniontown	PA	7188	5,000	9/25/2001	
193	83	Radcliffe	Uniontown	PA	157	10,000	1/12/1998	
193	82	Radcliffe	Uniontown	PA	159	10,000	1/12/1998	
193	82	Radcliffe	Uniontown	PA	160	10,000	1/12/1998	
193	82	Radcliffe	Uniontown	PA	161	10,000	1/12/1998	
193	82	Radcliffe	Uniontown	PA	162	10,000	1/12/1998	
193	82	Radcliffe	Uniontown	PA	163	10,000	1/12/1998	
193	82	Radcliffe	Uniontown	PA	164	7,477	1/12/1998	
193	82	Radcliffe	Uniontown	PA	165	1,500	1/12/1998	
193	82	Radcliffe	Uniontown	PA	366	750	4/24/1998	
194	83	Radcliffe	Uniontown	PA	166	1,500	1/12/1998	
195	83	Radcliffe	Uniontown	PA	167	1,500	1/12/1998	
195	83	Radcliffe	Uniontown	PA	368	750	4/24/1998	
196	84	Rautzen	Dayton	OH	275	50	5/20/1997	
196	84	Rautzen	Dayton	OH	369	250	4/24/1998	
196	84	Rautzen	Dayton	OH	274	200	5/20/1998	
196	84	Rautzen	Dayton	OH	126	500	12/4/1997	
198, 199	85	Richards	Tipp City	OH	5026	100	8/10/1998	1/3/2005
198, 199	85	Richards	Tipp City	OH	371	50	4/24/1998	1/3/2005
198, 199	85	Richards	Tipp City	OH	191	100	3/2/1998	1/3/2005
200	85	Richardson	Issaquah	WA	7109	11,490	1/12/2001	5/6/2003
200	85	Richardson	Issaquah	WA	7249	17,236	1/4/2002	
201	86	Riddle	Lawrenceville	GA	7029	5	9/11/2000	
202	86	Ridenour	Dayton	OH	5540	50	7/19/2000	
203	86	Ritter	Nashville	TN	37211	20	7/21/1999	
204	86	Rizzo	Dayton	OH	5541	25	7/19/2000	
205	87	Roberts	Naperville	IL	7205	11,228	11/13/2001	
206	87	Roberts	Lincolnshire	IL	7197	9,917	11/6/2001	
207	87	Rollson	Lawrenceville	GA	7129	1	3/9/2001	
207	87	Rollson	Lawrenceville	GA	7119	34	2/15/2001	
208	88	Rosa	Dayton	OH	7024	25	9/7/2000	
208	88	Rosa	Dayton	OH	5543	100	7/19/2000	
209	88	Ruchman	Northbrook	IL	372	50	4/24/1998	
209	88	Ruchman	Northbrook	IL	198	100	3/5/1998	
210	88	Ruecker	Hartford	WI	5357	719	1/7/2000	
211	88	Rypstra	San Jose	CA	5110	875	12/4/1998	
212	89	Savarino	Berkeley	CA	7265	77,735	12/18/2001	
213	89	Scates	Dayton	OH	5544	25	7/19/2000	
214, 215	89	Schierling	Bellbrook	OH	376	100	4/24/1998	
214, 215	89	Schierling	Bellbrook	OH	27	200	11/25/1996	
216	90	Schnibbe	Dayton	OH	7023	25	9/7/2000	
216	90	Schnibbe	Dayton	OH	5545	75	7/19/2000	
217	90	Schoen	Dayton	OH	337	50	4/24/1998	
217	90	Schoen	Dayton	OH	203	100	3/6/1998	
218	91	Schwartz	Dayton	OH	5329	1,000	12/21/1999	
219	90	Schwartz Trust	Kettering	OH	5405	5,000	4/4/2000	
219	90	Schwartz Trust	Kettering	OH	5406	5,000	4/5/2000	
219	90	Schwartz Trust	Kettering	OH	5407	5,000	4/6/2000	
220	91	Scott	Troy	OH	47	25	3/18/1997	
220	91	Scott	Troy	OH	382	12	4/24/1998	
221	91	Scott	Tampa	FL	5461	29	5/18/2000	

223	92	Scurti	Colorado Springs	CO	5484	28	6/27/2000	
224	92	Seales	Dayton	OH	5546	25	7/19/2000	
225, 226	92	Serena	Dayton	OH	5028	100	8/12/1998	
227, 228	93	Sillery Trust	Kettering	OH	234	100	3/27/1998	
227, 228	93	Sillery Trust	Kettering	OH	384	50	4/24/1998	
229	93	Simmons	Smyrna	GA	7160	12	7/2/2001	
230	93	Singleton	Alpharetta	GA	5197	4	3/16/1999	
233	94	Smith	Antioch	TN	5180	5	3/15/1999	
235	95	Snyder	Dunwoody	GA	7139	2	3/23/2001	
236	96	Soukenik	Arlington	VA	96	4,640	9/30/1997	
236	96	Soukenik	Arlington	VA	227	2,317	3/25/1998	
236	96	Soukenik	Arlington	VA	388	3,478	4/24/1998	
236	96	Soukenik	Arlington	VA	5230	3,601	6/4/1999	
236	96	Soukenik	Arlington	VA	7219	105	11/23/2001	
237	96	Spadafora	Indiana	PA	5042	1,000	9/3/1998	
237	96	Spadafora	Indiana	PA	5080	500	10/23/1998	
237	96	Spadafora	Indiana	PA	5081	500	10/23/1998	
237	96	Spadafora	Indiana	PA	5172	1,000	2/19/1999	
238	97	Spartz	Menomonee Falls	WI	5351	250	1/7/2000	
238	97	Spartz	Menomonee Falls	WI	7257	2	12/14/2001	
239	97	Spray	Dayton	OH	5547	25	7/19/2000	
242	98	Stefanski	Glen Ellyn	IL	5352	624	1/7/2000	
243, 244	98	Steiden	Louisville	KY	7292	67	2/4/2002	
245	98	Stevenson	Dayton	OH	7077	40	11/21/2000	
246	99	Sullivan	Beavercreek	OH	5276	225	8/18/1999	
247	99	Taylor	Houston	TX	5244	10	7/6/1999	
248	99	Tedder	Dayton	OH	5549	25	7/19/2000	
249	99	Teeters	San Bruno	CA	5247	5	7/12/1999	
249	99	Teeters	San Bruno	CA	5204	55	3/24/1999	
250	100	Tenzel	Nashville	TN	5281	49	10/18/1999	
251	100	Thompson	San Diego	CA	7226	45	11/23/2001	
252	100	Thompson	Alpharetta	GA	5475	3	6/20/2000	
254	101	Tregea	Alameda	CA	7295	54	2/12/2002	
255	101	Trott	Seattle	WA	5192	15	3/16/1999	
256	101	Turner	Dayton	OH	5550	50	7/19/2000	
257	102	Turvy	Cincinnati	OH	5489	276	7/5/2000	
258	102	UpChurch	Smyrna	TN	7010	7	8/16/2000	
259	102	Vail	Dayton	OH	248	50	4/29/1998	
260	102	Velazquez	Dayton	OH	5552	25	7/19/2000	
261	103	Vergauwen	Downers Grocer	IL	7228	264	11/23/2001	
261	103	Vergauwen	Downers Grocer	IL	5345	35,142	1/7/2000	
262	103	Walker	Dayton	OH	395	15	4/24/1998	
262	103	Walker	Dayton	OH	56	30	6/30/1997	
263	103	Warrick	Cleveland	OH	397	100	4/24/1998	
263	103	Warrick	Cleveland	OH	38	200	1/27/1997	
264	104	Werner	New York	NY	7247	100	12/6/2001	
265	104	Westminster Investments LTD	Pittsburgh	PA	106	20,000	9/30/1997	3/19/2004
265	104	Westminster Investments LTD	Pittsburgh	PA	107	20,000	10/1/1997	3/20/2004
265	104	Westminster Investments LTD	Pittsburgh	PA	108	20,000	10/2/1997	3/21/2004
265	104	Westminster Investments LTD	Pittsburgh	PA	5467	10,000	6/5/2000	3/19/2004
265	104	Westminster Investments LTD	Pittsburgh	PA	5473	55,000	6/14/2000	
266	104	Wheater	Rochester	NY	5183	12	3/15/1999	

271	107	Wilhelm Trust	Dayton	OH	7191	250	10/1/2001	
271	107	Wilhelm Trust	Dayton	OH	7216	2	11/23/2001	
272	107	Wilkes	San Francisco	CA	7222	955	11/23/2001	
273	107	Williams	Dayton	OH	28	10	11/25/1996	
273	107	Williams	Dayton	OH	403	5	4/24/1998	
274, 275	107	Wilson	Crown Point	IN	5478	100	6/22/2000	1/3/2005
274, 275	107	Wilson	Crown Point	IN	7217	45	11/23/2001	1/3/2005
276	108	Wilson	Kettering	OH	253	10	5/5/1998	
276	108	Wilson	Kettering	OH	404	30	4/24/1998	
276	108	Wilson	Kettering	OH	124	60	11/17/1997	
278	108	Wolf	New York	NY	7285	1	1/14/2002	
279	109	Woodward	Springboro	OH	7093	60	12/15/2000	
280	109	Yetsko	Kettering	OH	5177	3	3/15/1999	
281	109	Yoches	Costa Mesa	CA	7225	812	11/23/2001	
282, 283	110	Yuhas	Struthers	OH	25	100	11/22/1996	
284	110	Zimmer	Union	OH	5458	150	5/11/2000	
						1,239,051	**shares**	

Not included are the following shareholders listed in Exhibit 39c, whose shares were either purchased and sold prior to February 26, 2002 or purchased after MCSi's bankruptcy on June 3, 2003:

103	53	JJB Hilliard WL Lyons Inc.	Louisville	KY	7196	25,000	11/7/2001	11/14/2001
103	53	JJB Hilliard WL Lyons Inc.	Louisville	KY	7211	10,000	11/21/2001	11/30/2001
138	62	Long	Baltimore	MD	7425	475	7/17/2003	